

3 Am. Jur. 2d Adverse Possession I Refs.

American Jurisprudence, Second Edition | May 2021 Update

Adverse Possession

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3 Am. Jur. 2d Adverse Possession § 1

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Adverse Possession

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I. In General

§ 1. Nature of adverse possession

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Forms relating to effects and adverse possession, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [\[Westlaw® Search Query\]](#)

Adverse possession is a method whereby a person who was not the owner of property obtains a valid title to that property by the passage of time.¹ The concept of adverse possession allows a person to claim title to property presently titled in another² and permits one to achieve ownership of another's property by operation of law.³ Adverse possession is thus recognized as a mode or method of acquiring title to property,⁴ but it is not a favored one.⁵

CUMULATIVE SUPPLEMENT

Cases:

An adverse possession claim is really one for recognition of title and enforcement of the rights that accompany title. [Roy v. Woodstock Community Trust, Inc.](#), 2013 VT 100A, 94 A.3d 530 (Vt. 2014).

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Footnotes

- 1 [Wallace v. Ayres](#), 228 Ark. 1007, 311 S.W.2d 758 (1958); [USA Cartage Leasing, LLC v. Baer](#), 202 Md. App. 138, 32 A.3d 88 (2011), cert. granted, [425 Md. 227](#), 40 A.3d 39 (2012) and judgment aff'd, [429 Md. 199](#), 55 A.3d 510 (2012).
As to the operation and effect of adverse possession, see §§ [231](#) to [252](#).
- 2 [Bynum v. Lewis](#), 393 S.W.3d 916 (Tex. App. Tyler 2013).
- 3 [Recreation Land Corp. v. Hartzfeld](#), 2008 PA Super 76, 947 A.2d 771 (2008).
- 4 [Tenala, Ltd. v. Fowler](#), 921 P.2d 1114 (Alaska 1996); [Hart v. Sternberg](#), 205 Ark. 929, 171 S.W.2d 475 (1943); [Cosgrove v. Young](#), 230 Kan. 705, 642 P.2d 75 (1982); [Walling v. Przybylo](#), 7 N.Y.3d 228, 818 N.Y.S.2d 816, 851 N.E.2d 1167 (2006).
- 5 [Cockrell v. Kelley](#), 428 So. 2d 622 (Ala. 1983); [Candler Holdings Ltd. I v. Watch Omega Holdings, L.P.](#), 947 So. 2d 1231 (Fla. 1st DCA 2007); [Striefel v. Charles-Keyt-Leaman Partnership](#), 1999 ME 111, 733 A.2d 984 (Me. 1999); [CSC Acquisition-NY, Inc. v. 404 County Road 39A, Inc.](#), 96 A.D.3d 986, 947 N.Y.S.2d 556 (2d Dep't 2012); [Houck v. Bd. of Park Commrs. of the Huron Cty. Park Dist.](#), 116 Ohio St. 3d 148, 2007-Ohio-5586, 876 N.E.2d 1210 (2007); [Flagg v. Faudree](#), 2012 OK CIV APP 4, 269 P.3d 45 (Div. 2 2011); [A.B. Cattle Co. v. Forgey Ranches, Inc.](#), 943 P.2d 1184 (Wyo. 1997).

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I. In General

§ 2. Definition of adverse possession

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West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 1

"Adverse possession" has been defined as an actual and visible appropriation of property commenced and continued under a claim of right inconsistent with and hostile to the claim of another.¹ It also has been defined as the open and notorious possession and occupation of real property under an evident claim or color of right or, in other words, a possession in opposition to the true title and record owner—a possession commenced in wrong and maintained in right.²

Observation:

In some jurisdictions, the term used for adverse possession is "virgin title."³

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Footnotes

- 1 Fritts v. Ericson, 87 Ariz. 227, 349 P.2d 1107 (1960); Peters v. Gillund, 186 S.W.2d 1019 (Tex. Civ. App. Galveston 1945), writ refused w.o.m., (June 13, 1945); Olwell v. Clark, 658 P.2d 585 (Utah 1982). As to the elements of adverse possession, generally, see § 9.
- 2 Martin v. Winston, 209 Ark. 464, 190 S.W.2d 962 (1945).

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I. In General

§ 3. Governing law

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Adverse possession is an amalgam of statutory and common law¹ and is governed by both common and statutory law.² In some states, adverse possession may be established either under the common law or pursuant to statutory provisions.³ In other states, there is only one adverse-possession claim, which is the common law claim as amended by the legislature.⁴

Observation:

Statutes providing for the length of time during which an adverse possession must be maintained to ripen into title are not objectionable on the theory that they deprive the owner of property without due process of law.⁵

CUMULATIVE SUPPLEMENT

Cases:

Amendments to adverse possession statutes that added good-faith requirement applied to adverse possessor's claim to record owner's parking lot, which was adjacent to adverse possessor's property, where amendments expressly applied to claims that

had not yet vested before enactment, and adverse possessor's claim had not yet vested before amendments were enacted, in that her period of possession of parking lot began about one year before enactment of amendments. [Alaska St. §§ 09.10.030, 09.45.052\(a\). Prax v. Zalewski, 400 P.3d 116 \(Alaska 2017\)](#).

Under statute governing adverse possession, the version of the law in effect at the time the purported adverse possession allegedly ripened into title is the law applicable to the claim, even if the action was commenced after the effective date of the new legislation. [N.Y. RPAPL § 522\(1\). Houdek Real Estate Company, LLC v. Bayport Postal Realty, LLC, 180 A.D.3d 761, 119 N.Y.S.3d 150 \(2d Dep't 2020\)](#).

The rationale behind adverse possession lies in the sound public policy to encourage those who diligently develop and improve the land as against those who are content to hold the bare legal title inactively for many years. [42 Pa. Cons. Stat. Ann. § 5530. City of Philadelphia v. Galdo, 217 A.3d 811 \(Pa. 2019\)](#).

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Footnotes

- 1 [Moore v. Stills, 307 S.W.3d 71 \(Ky. 2010\), as corrected, \(Apr. 7, 2010\)](#).
- 2 [Sutton v. Gardner, 2011 Ark. App. 737, 387 S.W.3d 185 \(2011\); Agrons v. Strong, 250 Or. App. 641, 282 P.3d 925 \(2012\)](#).
- 3 [Doss v. Duggan, 555 So. 2d 116 \(Ala. 1989\)](#).
- 4 [Dombkowski v. Ferland, 2006 ME 24, 893 A.2d 599 \(Me. 2006\)](#).
- 5 [Linton v. Heye, 69 Neb. 450, 95 N.W. 1040 \(1903\), aff'd, 194 U.S. 628, 24 S. Ct. 856, 48 L. Ed. 1157 \(1904\)](#).

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I. In General

§ 4. Governing law—Conflict of laws

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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In an action based on adverse possession, the law as it exists at the time the adverse possession is perfected and title passes controls rather than the law as it exists at the beginning of the adverse occupation.¹ Even if the law permits the acquisition of title by adverse possession of certain property from the inception of the possession, title to the property cannot be so acquired if a statute is enacted before the expiration of the required period of adverse possession prohibiting adverse acquisition of title in that kind of property.² Further, where title has vested by adverse possession, it may not be disturbed retroactively by newly enacted or amended legislation,³ and thus, statutory changes to the law governing adverse possession do not apply to property owners whose rights to the disputed land had vested prior to that time.⁴

The law of the state in which real estate is located determines whether title has been acquired by adverse possession,⁵ and the acquisition of title to personalty by adverse possession is governed by the law of the state in which the property was situated at the time the transfer took place.⁶

CUMULATIVE SUPPLEMENT

Cases:

Under federal common law choice-of-law, the law of Spain governed art foundation's claim that it acquired ownership of painting by adverse possession; Spain, where transfer was claimed to have taken place and where painting had been located for more than 20 years, had the dominant interest in determining the circumstances under which ownership of the painting could be acquired by adverse possession or prescription. [Restatement \(Second\) of Conflict of Laws §§ 222, 246. Cassirer v. Thyssen-Bornemisza Collection Foundation](#), 153 F. Supp. 3d 1148 (C.D. Cal. 2015).

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3 Am. Jur. 2d Adverse Possession § 5

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I. In General

§ 5. Construction of doctrine of adverse possession

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West's Key Number Digest

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The doctrine of adverse possession is to be taken strictly¹ or strictly construed.² Since adverse possession may deprive true and legal owners of their property,³ strict compliance with statutory requirements by those seeking ownership through adverse possession is required.⁴ Moreover, a claim of adverse possession must be construed strictly in favor of the owner of title.⁵

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Footnotes

- 1 [Young v. Young](#), 112 Conn. App. 120, 961 A.2d 1029 (2009); [Hassell v. Texaco, Inc.](#), 1962 OK 136, 372 P.2d 233 (Okla. 1962).
- 2 [Keng v. Franklin](#), 267 Ga. 472, 480 S.E.2d 25 (1997); [Garrett v. Huster](#), 684 N.W.2d 250 (Iowa 2004).
- 3 [Peters v. Smuggler-Durant Min. Corp.](#), 930 P.2d 575 (Colo. 1997).
- 4 [Peters v. Smuggler-Durant Min. Corp.](#), 930 P.2d 575 (Colo. 1997); [Candler Holdings Ltd. I v. Watch Omega Holdings, L.P.](#), 947 So. 2d 1231 (Fla. 1st DCA 2007).
- 5 [Crown Credit Co., Ltd. v. Bushman](#), 170 Ohio App. 3d 807, 2007-Ohio-1230, 869 N.E.2d 83 (3d Dist. Auglaize County 2007).

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I. In General

§ 6. Statutes of limitation as basis

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  1

Adverse possession has been held to be based on, or developed from, the statutes of limitation on actions for the recovery of property.¹ Indeed, an adverse possession statute serves as a statute of limitations, prohibiting any claim to the property unless possession adverse to the owner has continued for a period of time.² Adverse possession statutes, like other statutes of limitation, rest on a public policy that regards litigation with disfavor and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence.³ The purpose of adverse possession statutes is to quiet title to property,⁴ and the intention of such statutes is not to punish one who neglects to assert rights but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or color of title.⁵

Observation:

An adverse possession statute creates a period of limitations on an action to quiet title that runs only against the record owner of the land; the adverse possessor is under no duty to quiet title by judicial action nor to vigorously assert his or her right at every opportunity.⁶

Footnotes

1 Sparks v. Byrd, 562 So. 2d 211 (Ala. 1990); O'Hearne v. McClammer, 163 N.H. 430, 42 A.3d 834 (2012); Carnevale v. Dupee, 783 A.2d 404 (R.I. 2001).
The doctrine of adverse possession is an application of the 20-year statute of limitation for the recovery of lands. *McNeil v. Ketchens*, 397 Ill. App. 3d 375, 341 Ill. Dec. 616, 931 N.E.2d 224 (4th Dist. 2010).

2 *Crone v. Nuss*, 46 Kan. App. 2d 436, 263 P.3d 809 (2011), review denied, (June 13, 2012).

3 *Snow v. Boykin*, 432 So. 2d 1210 (Ala. 1983); *Stolfa v. Gaines*, 1929 OK 487, 140 Okla. 292, 283 P. 563 (1929); *Ashton-Jenkins Co. v. Bramel*, 56 Utah 587, 192 P. 375, 11 A.L.R. 752 (1920); *Hamilton v. Witner*, 50 Wash. 689, 97 P. 1084 (1908).

4 *Alice State Bank v. Houston Pasture Co.*, 247 U.S. 240, 38 S. Ct. 496, 62 L. Ed. 1096 (1918); *Finn v. Alexander*, 102 Kan. 607, 171 P. 602 (1918); *Campbell v. Sigmon*, 170 N.C. 348, 87 S.E. 116 (1915); *Central Pac. Ry. Co. v. Tarpey*, 51 Utah 107, 168 P. 554, 1 A.L.R. 1319 (1917); *Chaplin v. Sanders*, 100 Wash. 2d 853, 676 P.2d 431 (1984); *Calvert v. Murphy*, 73 W. Va. 731, 81 S.E. 403 (1914).

5 *Osceola Fertilizer Co. v. Beville*, 86 Fla. 479, 98 So. 354 (1923); *Stolfa v. Gaines*, 1929 OK 487, 140 Okla. 292, 283 P. 563 (1929).

6 *Carnevale v. Dupee*, 783 A.2d 404 (R.I. 2001).

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I. In General

§ 7. Presumption of grant or conveyance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  1

Title by adverse possession has been held to rest on a presumed grant or conveyance¹ or on the presumption of a lost grant.² In other words, if it is shown that one has held an uninterrupted possession of property for a long period of time while exercising proprietary rights, the law raises a presumption of an ancient or lost grant of title.³

This presumption is one of policy,⁴ as well as convenience, and is necessary for the peace and security of society; it is founded on the consideration that the facts are such as could not, according to the ordinary course of human affairs, occur unless there was a transmutation of title to, or an admission of an existing title in, the party in possession.⁵ The presumption of a lost grant to property recognizes that lapse of time may cure the failure to secure the proper muniments of title even though the lost grant may not have been in fact executed.⁶

At the end of the appropriate statutory limitations period, the presumption that there was a grant crystallizes into a rule of law and becomes irrebuttable.⁷ Thus, if property is maintained in adverse possession for the statutory term, the law presumes a conveyance,⁸ and this includes a presumption of the occurrence of all matters essential to give the conveyance effect.⁹

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Footnotes

1 [Phillips v. State, ex rel. Dept. of Natural Resources and Environmental Control](#), 449 A.2d 250 (Del. 1982); [Sterling v. Sterling](#), 211 Md. 493, 128 A.2d 277 (1957).

2 [People v. System Properties, Inc.](#), 2 N.Y.2d 330, 160 N.Y.S.2d 859, 141 N.E.2d 429 (1957).

3 Townsend v. Boyd, 217 Pa. 386, 66 A. 1099 (1907); *Bordages v. Stanolind Oil & Gas Co.*, 129 S.W.2d 786 (Tex. Civ. App. Galveston 1938), writ dismissed, judgment correct; *Bull Run Development Corp. v. Jackson*, 201 Va. 95, 109 S.E.2d 400 (1959); *Logan's Heirs v. Ward*, 58 W. Va. 366, 52 S.E. 398 (1905).

4 *Stolfa v. Gaines*, 1929 OK 487, 140 Okla. 292, 283 P. 563 (1929).

5 *U.S. v. Fullard-Leo*, 331 U.S. 256, 67 S. Ct. 1287, 91 L. Ed. 1474 (1947).

6 *U.S. v. Fullard-Leo*, 331 U.S. 256, 67 S. Ct. 1287, 91 L. Ed. 1474 (1947); *Bordages v. Stanolind Oil & Gas Co.*, 129 S.W.2d 786 (Tex. Civ. App. Galveston 1938), writ dismissed, judgment correct.

7 *Trustees of Schools of Tp. No. 8 v. Lilly*, 373 Ill. 431, 26 N.E.2d 489 (1940); *Lincoln Parish School Bd. v. Ruston College*, 162 So. 2d 419 (La. Ct. App. 2d Cir. 1964).

8 *Cooper v. Tarpley*, 112 Ind. App. 1, 41 N.E.2d 640 (1942); *Cadwalader v. Price*, 111 Md. 310, 73 A. 273 (1909); *Scottish Am. Mortg. Co. v. Butler*, 99 Miss. 56, 54 So. 666 (1911); *Stolfa v. Gaines*, 1929 OK 487, 140 Okla. 292, 283 P. 563 (1929).

9 *Stolfa v. Gaines*, 1929 OK 487, 140 Okla. 292, 283 P. 563 (1929).

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I. In General

§ 8. Distinguishing adverse possession and prescription

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  1

The term "adverse possession" should be distinguished from the term "prescription."¹ The terms differ principally in the nature of the right² or the kinds of land interests³ acquired, with adverse possession resulting in actual and complete legal title to the property,⁴ and prescription resulting in the acquisition of rights in the land of another, such as an easement.⁵ In adverse possession, the claimant occupies or possesses the land of the fee owner while in prescription, the claimant makes some easement-like use of it.⁶ In some jurisdictions, however, the acquisition of title to property by adverse possession is called prescription.⁷

To the extent that an analogy exists between adverse possession and prescription, the statutory rules for one should be applied to both.⁸ However, if the question involved is the kind of physical conduct requisite to gaining an easement by prescription, the conduct ordinarily required for acquiring the title to real property by adverse possession affords no analogy because one does not possess or occupy an easement or any other incorporeal right.⁹

While prescription is measured by use rather than by possession, the adverse use necessary to acquire a prescriptive right generally must commence in the same way and be of the same general character as the adverse possession required to give title to real estate.¹⁰ In either prescription or adverse possession, the right is acquired only by actual, continuous, uninterrupted use or possession by the claimant of the property of another, for a prescribed term.¹¹ In both situations, the use or possession must be inconsistent with the owner's use and enjoyment of the property and must not be a permissive use.¹²

In some states, the period of time within which the right to property by adverse possession and the right to an easement by prescription ripen is the same,¹³ but in other states, the period of time is different.¹⁴

Footnotes

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II. Elements and Requisites

A. In General

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II. Elements and Requisites

A. In General

§ 9. Generally

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Trial Strategy

[Acquisition of Title to Property by Adverse Possession](#), 39 Am. Jur. Proof of Facts 2d 261

Forms

Forms relating to elements of adverse possession, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [\[Westlaw® Search Query\]](#)

In order for a party to establish title or ownership to property by adverse possession, the possession or use of such property must be hostile, actual, exclusive, continuous, and open and notorious throughout a prescribed period of time.¹ It is also generally necessary that the possession of the property be under a claim of right or title² or color of title.³ In some jurisdictions, the payment of taxes is also necessary.⁴ Some jurisdictions also require that the possession or use of the property be visible⁵ or that

the possession be accompanied with an intent to hold against the true owner.⁶ When these elements coincide, title by adverse possession is acquired.⁷

If any one of the elements necessary to constitute adverse possession is absent, title by adverse possession cannot be gained.⁸ The existence of each element must be simultaneous and continuous for the required period.⁹

CUMULATIVE SUPPLEMENT

Cases:

To constitute an effective adverse possession, all of the elements for such a claim must be satisfied, and if any elements are not satisfied the possession will not confer title. [Moody v. Sundley, 2015 ND 204, 868 N.W.2d 491 \(N.D. 2015\)](#).

Purchasers of southern portion of tract of real property acquired title to northern portion by adverse possession under the ten-year adverse possession statute; purchasers entered into an earnest money contract and a purchase and sale agreement that included northern portion, though eventual deed did not, purchasers paid the taxes on the entire property, and purchasers visibly appropriated the northern portion in a manner plainly adverse to the title owners and that gave notice to any other person claiming a right in the property by mowing and clearing trees and seeking building permits. [Tex. Civ. Prac. & Rem. Code Ann. § 16.026. Estrada v. Cheshire, 470 S.W.3d 109 \(Tex. App. Houston 1st Dist. 2015\)](#), reh'g overruled, (Oct. 20, 2015).

Landowner and his predecessors-in-interest exclusively possessed window wells that encroached on neighbor's property for statutory ten-year period, as needed for landowner to establish adverse possession of window wells; predecessors-in-interest believed window wells were part of their property and used them exclusively to benefit their property while they owned it, and landowner knew window wells existed when he purchased property and continued to use them exclusively to benefit his home even after he discovered in a survey three years later they were on neighbor's property. [Wyo. Stat. Ann. § 1-3-103. Woodward v. Valvoda, 2021 WY 5, 478 P.3d 1189 \(Wyo. 2021\)](#).

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Footnotes

1 [Sears v. Catholic Archdiocese of Washington, 5 A.3d 653 \(D.C. 2010\); Wailuku Agribusiness Co., Inc. v. Ah Sam, 114 Haw. 24, 155 P.3d 1125 \(2007\)](#), as amended without opinion, (Apr. 12, 2007); [Township of Jubilee v. State, 405 Ill. App. 3d 489, 344 Ill. Dec. 746, 937 N.E.2d 769 \(3d Dist. 2010\)](#), appeal allowed, [239 Ill. 2d 591, 348 Ill. Dec. 199, 943 N.E.2d 1109 \(2011\)](#) and judgment aff'd, [2011 IL 111447, 355 Ill. Dec. 668, 960 N.E.2d 550 \(Ill. 2011\); Garrett v. Huster, 684 N.W.2d 250 \(Iowa 2004\); Moore v. Stills, 307 S.W.3d 71 \(Ky. 2010\)](#), as corrected, (Apr. 7, 2010); [Banks v. Pusey, 393 Md. 688, 904 A.2d 448 \(2006\); Hebert v. City of Fifty Lakes, 744 N.W.2d 226 \(Minn. 2008\); Watson v. Mense, 298 S.W.3d 521 \(Mo. 2009\); Estate of Becker v. Murtagh, 19 N.Y.3d 75, 945 N.Y.S.2d 196, 968 N.E.2d 433 \(2012\); Akin v. Castleberry, 2012 OK 79, 286 P.3d 638 \(Okla. 2012\); Agrons v. Strong, 250 Or. App. 641, 282 P.3d 925 \(2012\); Millvale Plantation, LLC v. Garrison Family Ltd. Partnership, 401 S.C. 166, 736 S.E.2d 286 \(Ct. App. 2012\); Cumulus Broadcasting, Inc. v. Shim, 226 S.W.3d 366 \(Tenn. 2007\); Gorman v. City of Woodinville, 175 Wash. 2d 68, 283 P.3d 1082 \(2012\); O'Dell v. Stegall, 226 W. Va. 590, 703 S.E.2d 561 \(2010\); Helm v. Clark, 2010 WY 168, 244 P.3d 1052 \(Wyo. 2010\)](#).

2 § 103.

3 § 111.

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3 Am. Jur. 2d Adverse Possession § 10

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II. Elements and Requisites

A. In General

§ 10. Necessity of title

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West's Key Number Digest

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One claiming title by adverse possession always claims in derogation of the right of the true owner, admitting that the legal title is in another.¹ Thus, as a general rule, one who seeks to set up an adverse possession need not have a good title, or in fact any title, except a possession adverse and hostile to that of the true owner under a pretense or claim of title.² The adverse claimant rests the claim not on title but on holding adversely to the true owner for the term prescribed by the statute of limitations.³

Reminder:

Adverse possession also may exist with color of title, and under some statutes, color of title is essential to the acquisition of title by adverse possession.⁴

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Footnotes

¹ [Mercer v. Wayman](#), 9 Ill. 2d 441, 137 N.E.2d 815 (1956).

2 [Casner v. Common School Dist. No. 7, Sumner County, 175 Kan. 551, 265 P.2d 1027 \(1954\)](#).
As to a claim of title, see §§ 103 to 110.

3 [Mercer v. Wayman, 9 Ill. 2d 441, 137 N.E.2d 815 \(1956\)](#).
As to the duration of adverse possession, generally, see § 12.
4 § 111.

3 Am. Jur. 2d Adverse Possession § 11

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II. Elements and Requisites

A. In General

§ 11. Personal property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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While a discussion of adverse possession ordinarily centers on real property, the same principle has been applied to the acquisition of title to personal property.¹ Thus, if a person has the peaceable, undisturbed, open possession of personal property, with an assertion of ownership, for the term that would bar an action for its recovery by the true owner, the claimant has acquired title superior to that of the true owner, whose neglect to assert legal rights results in a loss of title.²

For a person to acquire title to personal property by adverse possession, the possession must be under a claim of right and involve open, public, and notorious use³ and must be actual, hostile, continuous, and exclusive for the applicable limitation term.⁴

Some statutes provide that a person who possesses a movable thing in good faith and by a just title as owner during a certain period without interruption will thereby acquire the ownership of it unless the thing had been stolen or lost.⁵

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Footnotes

- 1 [Henderson v. First Nat. Bank of Dewitt](#), 254 Ark. 427, 494 S.W.2d 452 (1973) (stock certificates); [Isham v. Cudlip](#), 33 Ill. App. 2d 254, 179 N.E.2d 25 (2d Dist. 1962).
- 2 [State ex rel. Brooks v. Overland Beverage Co.](#), 69 Idaho 126, 203 P.2d 1009 (1949); [Lightfoot v. Davis](#), 198 N.Y. 261, 91 N.E. 582 (1910); [Priester v. Milleman](#), 161 Pa. Super. 507, 55 A.2d 540 (1947).
- 3 [Isham v. Cudlip](#), 33 Ill. App. 2d 254, 179 N.E.2d 25 (2d Dist. 1962).
- 4 [Bufano v. City and County of San Francisco](#), 233 Cal. App. 2d 61, 43 Cal. Rptr. 223 (1st Dist. 1965); [Isham v. Cudlip](#), 33 Ill. App. 2d 254, 179 N.E.2d 25 (2d Dist. 1962).

3 Am. Jur. 2d Adverse Possession II B Refs.

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Research References

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 40, 42, 44

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West's A.L.R. Digest, [Adverse Possession](#) 40, 42, 44

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3 Am. Jur. 2d Adverse Possession § 12

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II. Elements and Requisites

B. Duration of Possession

§ 12. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 40, 44

Forms

Forms relating to duration of possession, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [[Westlaw® Search Query](#)]

Under the common law, the period for adverse possession of property was 20 years,¹ and some states still use this as the period of time of possession required to establish title by adverse possession.² The length of time during which adverse possession must be maintained, however, varies in the different jurisdictions.³ Further, in some states, the period of possession required to establish title by adverse possession varies according to specified circumstances and requirements.⁴

Whatever the period required in the particular jurisdiction and under the particular circumstances, title by adverse possession cannot be acquired unless it is shown that the adverse possession continued for that period.⁵

A period of constructive possession under one statute of limitations cannot be tacked to a period of actual possession under another statute of limitations to make out the required time of possession to establish title by adverse possession.⁶

CUMULATIVE SUPPLEMENT

Cases:

Unless raised by another adverse possessor, the statute of limitations does not create a defense to an adverse possession claim. [Roy v. Woodstock Community Trust, Inc., 2013 VT 100A, 94 A.3d 530 \(Vt. 2014\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Sparks v. Byrd, 562 So. 2d 211 \(Ala. 1990\)](#).
- 2 [Chevy Chase Land Co. of Montgomery County, Md. v. U.S., 37 Fed. Cl. 545 \(1997\)](#), judgment aff'd, [230 F.3d 1375 \(Fed. Cir. 1999\)](#), amended, (Mar. 27, 2000) (applying Maryland law); [McGeechan v. Sherwood, 2000 ME 188, 760 A.2d 1068 \(Me. 2000\)](#); [City of Deadwood v. Summit, Inc., 2000 SD 29, 607 N.W.2d 22 \(S.D. 2000\)](#).
- 3 [Fairbanks North Star Borough v. Lakeview Enterprises, Inc., 897 P.2d 47 \(Alaska 1995\)](#) (10 years); [Altevogt v. Brand, 963 N.E.2d 1146 \(Ind. Ct. App. 2012\)](#) (10 years); [Crone v. Nuss, 46 Kan. App. 2d 436, 263 P.3d 809 \(2011\)](#), review denied, (June 13, 2012) (15 years); [Moore v. Stills, 307 S.W.3d 71 \(Ky. 2010\)](#), as corrected, (Apr. 7, 2010) (15 years); [DelSesto v. Lewis, 754 A.2d 91 \(R.I. 2000\)](#) (10 years); [Dawkins v. Mozie, 399 S.C. 290, 731 S.E.2d 342 \(Ct. App. 2012\)](#) (10 years); [Chittenden v. Waterbury Center Community Church, Inc., 168 Vt. 478, 726 A.2d 20 \(1998\)](#) (15 years); [Nickell v. Southview Homeowners Ass'n, 167 Wash. App. 42, 271 P.3d 973 \(Div. 2 2012\)](#), review denied, [174 Wash. 2d 1018, 282 P.3d 96 \(2012\)](#) (10 years); [Boykin v. Carbon County Bd. of Com'rs, 2005 WY 158, 124 P.3d 677 \(Wyo. 2005\)](#) (10 years).
- 4 [Sashinger v. Wynn, 571 So. 2d 1065 \(Ala. 1990\)](#) (10 years with payment of taxes and color of title; 20 without those factors); [National Property Owners Ass'n v. Hogue, 229 Ark. 743, 318 S.W.2d 151 \(1958\)](#); [Tilbury v. Osmundson, 143 Colo. 12, 352 P.2d 102 \(1960\)](#); [Baudin v. Charrier, 137 So. 2d 440 \(La. Ct. App. 3d Cir. 1962\)](#); [J & M Land Co. v. First Union Nat. Bank, 166 N.J. 493, 766 A.2d 1110 \(2001\)](#) (30 years for real estate other than woodland or uncultivated tracts; 60 years for woodland or uncultivated tracts); [Johnson v. McLamb, 247 N.C. 534, 101 S.E.2d 311 \(1958\)](#); [Sioux City Boat Club v. Mulhall, 79 S.D. 668, 117 N.W.2d 92 \(1962\)](#); [Greenway Parks Home Owners Ass'n v. City of Dallas, 159 Tex. 46, 312 S.W.2d 235 \(1958\)](#); [Marky Inv., Inc. v. Arnezeder, 15 Wis. 2d 74, 112 N.W.2d 211 \(1961\)](#).
- 5 [Lawse v. Glaha, 253 Iowa 1040, 114 N.W.2d 900 \(1962\)](#); [Berglund v. Sisler, 210 Neb. 258, 313 N.W.2d 679 \(1981\)](#); [In re Harlem River Drive, City of New York, 307 N.Y. 447, 121 N.E.2d 414 \(1954\)](#); [Collins v. Smith, 1962 OK 128, 372 P.2d 878 \(Okla. 1962\)](#).
- 6 [Vider v. Zavislan, 146 Colo. 519, 362 P.2d 163 \(1961\)](#).
As to constructive possession, generally, see § 24.

3 Am. Jur. 2d Adverse Possession § 13

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B. Duration of Possession

§ 13. Personal property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 40, 44

Ordinarily, the period of adverse holding required for obtaining title to personal property by adverse possession is the same as the statutory period that bars an action for the recovery of personal property by the real owner.¹ Some statutes, however, specifically prescribe a certain time of adverse holding to acquire personal property by adverse possession.²

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Footnotes

¹ [Lightfoot v. Davis](#), 198 N.Y. 261, 91 N.E. 582 (1910).

² [Henderson v. First Nat. Bank of Dewitt](#), 254 Ark. 427, 494 S.W.2d 452 (1973); [Succession of Quaglino](#), 232 La. 870, 95 So. 2d 481 (1957).

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3 Am. Jur. 2d Adverse Possession § 14

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B. Duration of Possession

§ 14. When possession begins to run

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 42

The required period of possession, to prove ownership of property by adverse possession, begins when the rightful owner has been deprived of possession or displaced by someone exercising the powers and privileges of ownership.¹ The remedies of trespass or ejectment must be available to the owner of the property before adverse possession begins to run.²

If there is an adverse possession of land under a mistaken entry, the statutory period for acquiring title by adverse possession runs from the date of the entry and not from the discovery of the mistake.³ The statute of limitations for the recovery of real property begins to run when the cause of action accrues, and the cause of action accrues when the owner is deprived of possession; the fact that the owner is deprived of possession under a mistaken entry does not alter this rule.⁴

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Footnotes

¹ [Canjar v. Cole](#), 283 Mich. App. 723, 770 N.W.2d 449 (2009).

² [Gunther & Shirley Co. v. Presbytery of Los Angeles](#), 85 Ariz. 56, 331 P.2d 257 (1958); [McDonald v. Burke](#), 288 S.W.2d 363 (Ky. 1955); [Ennis v. Stanley](#), 346 Mich. 296, 78 N.W.2d 114 (1956); [Zivic v. Place](#), 122 N.H. 808, 451 A.2d 960 (1982); [Brand v. Prince](#), 35 N.Y.2d 634, 364 N.Y.S.2d 826, 324 N.E.2d 314 (1974); [Olwell v. Clark](#), 658 P.2d 585 (Utah 1982).

The period applicable to an adverse possession claim should not start running until the titleholder has a visible, objective reason to know that someone is trespassing; the period cannot run on the sly. [McNeil v. Ketchens](#), 397 Ill. App. 3d 375, 341 Ill. Dec. 616, 931 N.E.2d 224 (4th Dist. 2010).

As to trespass, generally, see [Am. Jur. 2d, Trespass](#) §§ 1 et seq.

As to ejectment, generally, see [Am. Jur. 2d, Ejectment](#) §§ 1 et seq.

3 [Sorensen v. Costa, 32 Cal. 2d 453, 196 P.2d 900 \(1948\).](#)
4 [Sorensen v. Costa, 32 Cal. 2d 453, 196 P.2d 900 \(1948\).](#)

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3 Am. Jur. 2d Adverse Possession II C Refs.

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C. Actual Possession

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West's A.L.R. Digest, [Adverse Possession](#)  [11, 14, 16\(1\)](#) to [26](#)

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3 Am. Jur. 2d Adverse Possession § 15

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II. Elements and Requisites

C. Actual Possession

1. In General

§ 15. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  14

Actual possession is an indispensable element in adverse possession.¹ The actual possession of land necessary to constitute adverse possession requires a corporeal occupation,² and there must be an actual possession of at least some portions of the property to create a title by adverse possession.³ A mere intention on the part of a claimant to claim land adversely, unaccompanied by a physical entry or a taking of possession of the land, will never ripen into title.⁴ Likewise, a claim of ownership, in the absence of acts done upon the land indicating actual possession, gives no title by adverse possession to the claimant.⁵ One claiming property adversely therefore must be in actual possession of the property for the claim to be effective against the owner⁶ or before title will vest by adverse possession.⁷

Observation:

One purpose of the actual possession requirement is to give the true owner notice of the extent of the trespass because adverse possession generally does not extend beyond the land that the claimant actually occupies.⁸

CUMULATIVE SUPPLEMENT

Cases:

In order to establish adverse possession, a claimant must show they had actual possession of the subject property. [Ruby River Canyon Ranch, Ltd. v. Flynn, 2015 WY 74, 350 P.3d 748 \(Wyo. 2015\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 Harkins v. Fuller, 652 A.2d 90 (Me. 1995); Anderson v. Boyd, 229 Miss. 596, 91 So. 2d 537 (1956); Bilby v. Wire, 77 N.W.2d 882 (N.D. 1956); Davis v. Mayberry, 2010 OK CIV APP 94, 241 P.3d 663 (Div. 1 2010). As to the other elements of adverse possession, generally, see § 9.
- 2 Greenwood v. Young, 80 So. 3d 140 (Miss. Ct. App. 2012).
- 3 Gill v. Fletcher, 74 Ohio St. 295, 78 N.E. 433 (1906); Mullis v. Winchester, 237 S.C. 487, 118 S.E.2d 61 (1961); Connaghan v. Eighty-Eight Oil Co., 750 P.2d 1321 (Wyo. 1988).
- 4 New Covenant Worship Center v. Wright, 166 N.C. App. 96, 601 S.E.2d 245 (2004). A mere mental enclosure of land does not constitute the requisite actual possession for establishing ownership by adverse possession. Murphy v. Holman, 289 S.W.3d 234 (Mo. Ct. App. W.D. 2009).
- 5 Rucker v. Jackson, 180 Ala. 109, 60 So. 139 (1912); Bilby v. Wire, 77 N.W.2d 882 (N.D. 1956).
- 6 Turnipseed v. Moseley, 248 Ala. 340, 27 So. 2d 483, 170 A.L.R. 882 (1946); Seaboard Air Line Ry. Co. v. Board of Bond Trustees of Special Road and Bridge Dist. No. 1 of Alachua County, 91 Fla. 612, 108 So. 689, 46 A.L.R. 870 (1926); Meyers v. Canutt, 242 Iowa 692, 46 N.W.2d 72, 24 A.L.R.2d 1 (1951); Ramey v. Ramey, 353 S.W.2d 191 (Ky. 1962); White v. Hardisty, 220 Md. 152, 151 A.2d 764 (1959); Meyer v. Chessman, 132 Mont. 187, 315 P.2d 512 (1957); Frank v. Smith, 138 Neb. 382, 293 N.W. 329, 134 A.L.R. 458 (1940); Reid v. City of New York, 274 N.Y. 178, 8 N.E.2d 326 (1937); Bilby v. Wire, 77 N.W.2d 882 (N.D. 1956); Baxter v. Girard Trust Co., 288 Pa. 256, 135 A. 620, 49 A.L.R. 1011 (1927); Harrelson v. Reaves, 219 S.C. 394, 65 S.E.2d 478, 43 A.L.R.2d 1 (1951); Gibbs v. Lester, 41 S.W.2d 28, 80 A.L.R. 431 (Tex. Comm'n App. 1931).
- 7 Stroem v. Plackis, 96 A.D.3d 1040, 948 N.Y.S.2d 90 (2d Dep't 2012).
- 8 Striefel v. Charles-Keyt-Leaman Partnership, 1999 ME 111, 733 A.2d 984 (Me. 1999).

3 Am. Jur. 2d Adverse Possession § 16

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C. Actual Possession

2. What Constitutes Actual Possession

a. In General

§ 16. Generally

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West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 14, 26

Forms

Forms relating to what is possession, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [\[Westlaw® Search Query\]](#)

"Actual possession," for purposes of adverse possession, has been defined as use and occupation of the property,¹ or dominion over the property,² or as possession in fact, effected by actual entry on, and actual occupancy of, the premises.³ Similarly, it has been defined as a possession evidenced by such use and occupation of the claimed property as to establish a clear dominion over it.⁴ "Actual possession" also has been defined as effective control over a definite area of land, evidenced by things visible to the eye or perceptible to the senses.⁵

There is no fixed rule by which the actual possession of real property by an adverse claimant may be determined in all cases⁶ because the determination of what constitutes possession of property for purposes of adverse possession depends on the facts in each case⁷ and to a large extent on the character or nature of the premises.⁸ There may be actual possession of real

property without residence,⁹ cultivation of the lands,¹⁰ enclosure of the lands,¹¹ optimal use of the land,¹² erection of buildings on the land,¹³ or personal and physical,¹⁴ or actual, occupation of the property.¹⁵ A claimant's actual possession, however, requires something more than the mere occasional use of property.¹⁶ Thus, an occasional or periodical entry on property does not constitute actual possession.¹⁷

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Footnotes

- 1 Calhoun v. Woods, 246 Va. 41, 431 S.E.2d 285 (1993).
- 2 Recreation Land Corp. v. Hartzfeld, 2008 PA Super 76, 947 A.2d 771 (2008).
- 3 Striefel v. Charles-Keyt-Leaman Partnership, 1999 ME 111, 733 A.2d 984 (Me. 1999); Thomas v. Flynn, 169 Neb. 458, 100 N.W.2d 37 (1959).
- 4 Moore v. Stills, 307 S.W.3d 71 (Ky. 2010), as corrected, (Apr. 7, 2010).
- 5 Niebanck v. Block, 35 So. 3d 1260 (Miss. Ct. App. 2010).
- 6 Marvel v. Barley Mill Road Homes, 34 Del. Ch. 417, 104 A.2d 908 (1954); People's Sav. Bank v. Bufford, 90 Wash. 204, 155 P. 1068 (1916).
- 7 Burns v. Foster, 348 Mich. 8, 81 N.W.2d 386 (1957); Murphy v. Holman, 289 S.W.3d 234 (Mo. Ct. App. W.D. 2009); Cox v. Kelley, 1956 OK 72, 295 P.2d 1061 (Okla. 1956).
- 8 § 18.
- 9 § 27.
- 10 § 29.
- 11 § 33.
- 12 N.A.S. Holdings, Inc. v. Pafundi, 169 Vt. 437, 736 A.2d 780 (1999).
- 13 Manville v. Gronniger, 182 Kan. 572, 322 P.2d 789 (1958); Monroe v. Rawlings, 331 Mich. 49, 49 N.W.2d 55 (1951); Feinstein v. McGuire, 297 S.W.2d 513 (Mo. 1957).
- 14 Shilts v. Young, 567 P.2d 769 (Alaska 1977); Monroe v. Rawlings, 331 Mich. 49, 49 N.W.2d 55 (1951); Amey v. Hall, 123 Vt. 62, 181 A.2d 69 (1962).
- 15 Jones v. Leagan, 384 S.C. 1, 681 S.E.2d 6 (Ct. App. 2009); Campbell v. Reed, 134 Wash. App. 349, 139 P.3d 419 (Div. 2 2006).
- 16 Senez v. Collins, 182 Md. App. 300, 957 A.2d 1057 (2008).
- 17 Cockrell v. Kelley, 428 So. 2d 622 (Ala. 1983); Bailey v. Moten, 289 Ga. 897, 717 S.E.2d 205 (2011); Carpenter v. Ruperto, 315 N.W.2d 782 (Iowa 1982); Ennis v. Stanley, 346 Mich. 296, 78 N.W.2d 114 (1956); Norman v. Smedley, 1961 OK 143, 363 P.2d 839 (Okla. 1961); Westover Volunteer Fire Dept. v. Barker, 142 W. Va. 404, 95 S.E.2d 807 (1956).

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3 Am. Jur. 2d Adverse Possession § 17

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C. Actual Possession

2. What Constitutes Actual Possession

a. In General

§ 17. Control and dominion

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 11, 14, 16(1)

Actual possession, as required for adverse possession, requires a present ability to control the property possessed and an intent to exclude others from such control,¹ or a general holding and occupancy, with dominion over the property to the exclusion of others.² The evidence of a claimant's actual possession thus must be sufficient to alert a reasonably diligent owner to the adverse possessor's exercise of dominion and control.³ To establish adverse possession, however, the claimant need not stand guard at all times on the border of property to oppose the entry of trespassers or hostile claimants; it is enough if the person takes and maintains such possession and exercises such open dominion as ordinarily marks the conduct of owners in general in holding, managing, and caring for property of a similar nature and condition.⁴

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Footnotes

- 1 *Striefel v. Charles-Keyt-Leaman Partnership*, 1999 ME 111, 733 A.2d 984 (Me. 1999); *Fandel v. Empire Dist. Elec. Co.*, 393 S.W.3d 100 (Mo. Ct. App. S.D. 2013).
- 2 *Concord Corp. v. Huff*, 144 Colo. 72, 355 P.2d 73 (1960); *Hightower v. Pendergrass*, 662 S.W.2d 932 (Tenn. 1983).
- 3 As to exclusive possession, generally, see §§ 61 to 66.
- 4 *Vezey v. Green*, 35 P.3d 14 (Alaska 2001).

4

[Clear Lake Amusement Corp. v. Lewis](#), 236 Iowa 132, 18 N.W.2d 192 (1945); [Hibbard v. Robert G. Fromkin Woolen Corp.](#), 156 Me. 433, 165 A.2d 49 (1960); [Bilby v. Wire](#), 77 N.W.2d 882 (N.D. 1956); [Lynch v. Lynch](#), 236 S.C. 612, 115 S.E.2d 301 (1960).

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3 Am. Jur. 2d Adverse Possession § 18

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C. Actual Possession

2. What Constitutes Actual Possession

a. In General

§ 18. Effect of nature, character, and location of property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 16(1), 16(3), 17

The determination of what acts amount to actual possession of property, for purposes of adverse possession, depends upon and varies with the nature,¹ character,² and location of the property.³ In other words, the type of possessory acts necessary to constitute actual possession for purposes of adverse possession in one case may not be essential in another, due to the character and location of the property.⁴

What is actual possession for purposes of adverse possession may be one thing in a populous area, another thing in a sparsely settled area, and still a different thing in a city or village.⁵ Possession of an outlying and uncultivated piece of land therefore may be proved by acts of ownership somewhat different from those required with regard to land under enclosure and actual cultivation.⁶ Similarly, the acts of dominion necessary for adverse possession of a vacant lot need not be the same as with respect to a lot that is improved,⁷ and those acts that constitute possession of a residential lot may not constitute possession of a commercial lot.⁸ Furthermore, the acts sufficient to demonstrate possession of wild, undeveloped land may fall short of the activity needed to establish possession of developed property for purposes of adverse possession⁹ while the acts of possession required to establish adverse possession of woodland may be greater than in the case of swamp or marsh land.¹⁰

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Footnotes

1 Marvel v. Barley Mill Road Homes, 34 Del. Ch. 417, 104 A.2d 908 (1954); Walter v. Jones, 15 Ill. 2d 220, 154 N.E.2d 250 (1958); Manville v. Gronniger, 182 Kan. 572, 322 P.2d 789 (1958); Wood v. Bell, 2006 ME 98, 902 A.2d 843 (Me. 2006); Watson v. Mense, 298 S.W.3d 521 (Mo. 2009); Piston v. Hughes, 2013 PA Super 32, 62 A.3d 440 (2013); Mullis v. Winchester, 237 S.C. 487, 118 S.E.2d 61 (1961); Mandelbaum v. Looney Mercantile Co., 293 S.W. 203 (Tex. Civ. App. Austin 1927); N.A.S. Holdings, Inc. v. Pafundi, 169 Vt. 437, 736 A.2d 780 (1999); Leake v. Richardson, 199 Va. 967, 103 S.E.2d 227 (1958).

2 Wood v. McCoy, 228 Ark. 880, 311 S.W.2d 755 (1958); Senez v. Collins, 182 Md. App. 300, 957 A.2d 1057 (2008); Brandao v. DoCanto, 80 Mass. App. Ct. 151, 951 N.E.2d 979 (2011), review denied, 460 Mass. 1115, 957 N.E.2d 241 (2011); Burns v. Foster, 348 Mich. 8, 81 N.W.2d 386 (1957); Feinstein v. McGuire, 297 S.W.2d 513 (Mo. 1957); Thornburg v. Haecker, 243 Neb. 693, 502 N.W.2d 434 (1993); Ray v. Beacon Hudson Mountain Corp., 88 N.Y.2d 154, 643 N.Y.S.2d 939, 666 N.E.2d 532 (1996); Allred ex rel. Jensen v. Allred, 2008 UT 22, 182 P.3d 337 (Utah 2008).

Actual possession must be as definite as the character of the land will permit. [Chesbro v. Board of County Com'rs of Douglas County](#), 39 Kan. App. 2d 954, 186 P.3d 829 (2008).

Both the quality and quantity of possessory acts necessary to establish a claim of adverse possession may vary with the characteristics of the land. [Stone v. Lea Brent Family Investments, L.P.](#), 998 So. 2d 448 (Miss. Ct. App. 2008).

3 Wood v. McCoy, 228 Ark. 880, 311 S.W.2d 755 (1958); Senez v. Collins, 182 Md. App. 300, 957 A.2d 1057 (2008); Watson v. Mense, 298 S.W.3d 521 (Mo. 2009); Mullis v. Winchester, 237 S.C. 487, 118 S.E.2d 61 (1961).

4 Senez v. Collins, 182 Md. App. 300, 957 A.2d 1057 (2008).

5 Cooper v. Cook, 220 Ark. 344, 247 S.W.2d 957 (1952); Smith v. Brown, 126 Ind. App. 545, 134 N.E.2d 823 (1956); Feinstein v. McGuire, 297 S.W.2d 513 (Mo. 1957); Price v. Humble Oil & Refining Co., 152 S.W.2d 804 (Tex. Civ. App. Dallas 1941), writ refused w.o.m., (Oct. 22, 1941).

6 Goen v. Sansbury, 219 Md. 289, 149 A.2d 17 (1959); Ray v. Beacon Hudson Mountain Corp., 88 N.Y.2d 154, 643 N.Y.S.2d 939, 666 N.E.2d 532 (1996).

7 Hand v. Stanard, 392 So. 2d 1157 (Ala. 1980).

8 Garriott v. Peters, 878 N.E.2d 431 (Ind. Ct. App. 2007).

9 Senez v. Collins, 182 Md. App. 300, 957 A.2d 1057 (2008); Apperson v. White, 950 So. 2d 1113 (Miss. Ct. App. 2007); Dumproff v. Driskill, 376 S.W.3d 680 (Mo. Ct. App. S.D. 2012), reh'g and/or transfer denied, (Apr. 19, 2012).

10 Ricko Const., Inc. v. Dubois, 57 So. 3d 564 (La. Ct. App. 3d Cir. 2011).

A person establishes actual possession of a woodland, as an element of an adverse possession claim, by residence or cultivation of a part of the tract of land to which the woodland belongs. [Piston v. Hughes](#), 2013 PA Super 32, 62 A.3d 440 (2013).

3 Am. Jur. 2d Adverse Possession § 19

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2. What Constitutes Actual Possession

a. In General

§ 19. Effect of potential uses of property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 16(1), 17, 24

The determination of what acts amount to actual possession of property, for purposes of adverse possession, depends upon the uses to which the property can be applied¹ or for which it is adapted.² A claimant, to establish actual possession, must use the property for some purpose to which it is adapted,³ and it is sufficient that possession be shown by the continued use of the property for purposes for which it is susceptible.⁴ The standard to be applied to any particular tract of land is whether the possession comports with the ordinary management of similar lands by their owners, and if it does, satisfactory evidence of actual possession for adverse possession is furnished.⁵ An adverse possession claimant's use of the property thus need be only the ordinary use an owner would make of it to be actual use or possession for purposes of adverse possession.⁶

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Footnotes

¹ [Marvel v. Barley Mill Road Homes](#), 34 Del. Ch. 417, 104 A.2d 908 (1954); [Wood v. Bell](#), 2006 ME 98, 902 A.2d 843 (Me. 2006); [Watson v. Mense](#), 298 S.W.3d 521 (Mo. 2009); [Jackson v. Gallegos](#), 38 N.M. 211, 30 P.2d 719 (1934); [Mandelbaum v. Looney Mercantile Co.](#), 293 S.W. 203 (Tex. Civ. App. Austin 1927).

² [Walter v. Jones](#), 15 Ill. 2d 220, 154 N.E.2d 250 (1958); [Senez v. Collins](#), 182 Md. App. 300, 957 A.2d 1057 (2008); [Thomas v. Flynn](#), 169 Neb. 458, 100 N.W.2d 37 (1959); [Leake v. Richardson](#), 199 Va. 967, 103 S.E.2d 227 (1958).

3 Wemmer v. Young, 167 Neb. 495, 93 N.W.2d 837 (1958); Doyle v. Ellis, 549 S.W.2d 62 (Tex. Civ. App. Waco 1977).

4 Howe v. Natale, 451 A.2d 1198 (Me. 1982); Feinstein v. McGuire, 297 S.W.2d 513 (Mo. 1957).

5 Marvel v. Barley Mill Road Homes, 34 Del. Ch. 417, 104 A.2d 908 (1954); Smith v. Brown, 126 Ind. App. 545, 134 N.E.2d 823 (1956); Baptist Youth Camp v. Robinson, 1998 ME 175, 714 A.2d 809 (Me. 1998); Mauck v. Bailey, 247 Md. 434, 231 A.2d 685 (1967); Fulton v. Rapp, 45 Ohio Op. 494, 59 Ohio L. Abs. 105, 98 N.E.2d 430 (Ct. App. 2d Dist. Madison County 1950); Hoffman v. Freeman Land and Timber, LLC., 329 Or. 554, 994 P.2d 106 (1999); Anthony v. Searle, 681 A.2d 892 (R.I. 1996); ITT Rayonier, Inc. v. Bell, 112 Wash. 2d 754, 774 P.2d 6 (1989); Clithero v. Fenner, 122 Wis. 356, 99 N.W. 1027 (1904).

6 Peter H. and Barbara J. Steuck Living Trust v. Easley, 2010 WI App 74, 325 Wis. 2d 455, 785 N.W.2d 631 (Ct. App. 2010).

The adverse possessor, to actually possess land claimed by adverse possession, must act as the ordinary landowner would in utilizing the land for the ordinary use of which it is capable. *Beaver Creek Ranch, L.P. v. Gordman Leverich Ltd. Liability Ltd. Partnership*, 226 P.3d 1155 (Colo. App. 2009).

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3 Am. Jur. 2d Adverse Possession § 20

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2. What Constitutes Actual Possession

b. Possession Through Another

§ 20. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 25

What one may do personally in the matter of taking and holding possession of real estate for adverse possession purposes may be done by or through another.¹ Thus, the requirement of actual possession of property necessary to acquire title by adverse possession need not be met by acts of the adverse claimant² but may be met through acts of another, who actually possesses and occupies the land for, and in subordination to, the adverse claimant.³ Accordingly, the requirement of actual possession may be met or kept fresh through possession on behalf of the adverse claimant by an agent,⁴ licensee,⁵ relative,⁶ or tenant.⁷ The fact that a permittee of an adverse claimant in possession of real estate pays no rent to the latter does not as a matter of law destroy the efficacy of such possession for the benefit of the claimant.⁸

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Footnotes

¹ *Satterfield v. Peterson*, 173 Neb. 618, 114 N.W.2d 376 (1962) (contract purchaser); *Mahunda v. Thomas*, 55 Tenn. App. 470, 402 S.W.2d 485 (1965); *Faubion v. Elder*, 49 Wash. 2d 300, 301 P.2d 153 (1956) (overruled on other grounds by, *Chaplin v. Sanders*, 100 Wash. 2d 853, 676 P.2d 431 (1984)).

² *Hanna v. Ferrier*, 265 Ala. 450, 91 So. 2d 700 (1956); *Combs v. Ezell*, 232 Ky. 602, 24 S.W.2d 301 (1930); *Jackson v. Gallegos*, 38 N.M. 211, 30 P.2d 719 (1934); *Cox v. Kelley*, 1956 OK 72, 295 P.2d 1061 (Okla. 1956); *Foote v. Kearney*, 157 Wash. 681, 290 P. 226 (1930).

3 Hanna v. Ferrier, 265 Ala. 450, 91 So. 2d 700 (1956); Hunsley v. Valter, 12 Ill. 2d 608, 147 N.E.2d 356
(1958); Combs v. Ezell, 232 Ky. 602, 24 S.W.2d 301 (1930); Jackson v. Gallegos, 38 N.M. 211, 30 P.2d 719
(1934); Foote v. Kearney, 157 Wash. 681, 290 P. 226 (1930).

4 Norris v. Cox, 860 So. 2d 319 (Miss. Ct. App. 2003); Foote v. Kearney, 157 Wash. 681, 290 P. 226 (1930).

5 Hanna v. Ferrier, 265 Ala. 450, 91 So. 2d 700 (1956); Hightower v. Pendergrass, 662 S.W.2d 932 (Tenn.
1983).

6 Hanna v. Ferrier, 265 Ala. 450, 91 So. 2d 700 (1956).

7 § 21.

8 Jackson v. Gallegos, 38 N.M. 211, 30 P.2d 719 (1934).

3 Am. Jur. 2d Adverse Possession § 21

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b. Possession Through Another

§ 21. Tenant

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 25

Forms

Forms relating to tenants, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [[Westlaw® Search Query](#)]

The requirement of actual possession for purposes of adverse possession may be met or kept fresh through possession, on behalf of the adverse claimant, by a tenant of the claimant.¹ In other words, the possession by a tenant of the claimant is in law the possession of the claimant, who may claim the benefits.² The claimant, however, is bound by the nature of his or her lessee's possession.³

It has been held that the rule that adverse possession of a third person's land by a tenant inures to the benefit of the landlord generally does not apply if the land is not, either expressly or impliedly, within the terms of the lease.⁴ Thus, a landlord cannot base a claim of title by adverse possession to another's land on the possession of a tenant if the land was not included in the lease.⁵ It also has been held, however, that a tenant's adverse possession of a third person's land, not within the description in the lease, may inure to the landlord's benefit if the circumstances in connection with such possession justified the implication that it was included by virtue of the lease.⁶

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Footnotes

1 Cagle v. Hammond, 57 So. 3d 150 (Ala. Civ. App. 2010); Hunsley v. Valter, 12 Ill. 2d 608, 147 N.E.2d 356 (1958); Shoer v. Daffe, 337 Mass. 420, 149 N.E.2d 625 (1958); Satterfield v. Peterson, 173 Neb. 618, 114 N.W.2d 376 (1962); Hightower v. Pendergrass, 662 S.W.2d 932 (Tenn. 1983); Allred ex rel. Jensen v. Allred, 2008 UT 22, 182 P.3d 337 (Utah 2008); Turner v. Floyd C. Reno & Sons, Inc., 769 P.2d 364 (Wyo. 1989).

2 Crowden v. Grantland, 510 So. 2d 238 (Ala. 1987); Whittington v. Cameron, 385 Ill. 99, 52 N.E.2d 134, 150 A.L.R. 551 (1943); Combs v. Ezell, 232 Ky. 602, 24 S.W.2d 301 (1930); Moore v. Hoffman, 327 Mo. 852, 39 S.W.2d 339, 75 A.L.R. 135 (1931); Weiss v. Meyer, 208 Neb. 429, 303 N.W.2d 765 (1981); Dawson v. Tumlinson, 150 Tex. 451, 242 S.W.2d 191 (1951); Foote v. Kearney, 157 Wash. 681, 290 P. 226 (1930).

3 Turner v. Floyd C. Reno & Sons, Inc., 769 P.2d 364 (Wyo. 1989).

4 Deregibus v. Silberman Furniture Co., 121 Conn. 633, 186 A. 553, 105 A.L.R. 1183 (1936); Elwell v. Barbrick, 279 Mass. 272, 181 N.E. 184 (1932); Schofield v. Harrison Land & Mining Co., 187 S.W. 61 (Mo. 1916).

5 Elwell v. Barbrick, 279 Mass. 272, 181 N.E. 184 (1932); Capps v. Merrifield, 227 Mich. 194, 198 N.W. 918 (1924).

6 Deregibus v. Silberman Furniture Co., 121 Conn. 633, 186 A. 553, 105 A.L.R. 1183 (1936); Capps v. Merrifield, 227 Mich. 194, 198 N.W. 918 (1924).

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3 Am. Jur. 2d Adverse Possession § 22

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§ 22. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 14, 26

Forms

Forms relating to color of title: see Am. Jur. Pleading and Practice Forms, Adverse Possession [[Westlaw® Search Query](#)]

To establish title by adverse possession, actual possession of a tract of land claimed adversely under color of title is generally just as necessary as actual possession without color of title.¹ Thus, an adverse possessor under color of title must show actual possession of the property in question.² If the adverse possession is under a color of title, however, it is ordinarily sufficient if only part of the premises described in the color of title are actually occupied since color of title serves to extend actual possession to constructive possession.³

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Footnotes

¹ [National Property Owners Ass'n v. Hogue](#), 229 Ark. 743, 318 S.W.2d 151 (1958); [Diederich v. Ware](#), 288 S.W.2d 643 (Ky. 1956); [La Due v. Currell](#), 201 Va. 200, 110 S.E.2d 217 (1959).

2 B.B. & C. Partnership v. Edelweiss Condominium Ass'n, 218 P.3d 310 (Colo. 2009).
3 § 111.

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3 Am. Jur. 2d Adverse Possession § 23

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§ 23. Tax deed or title

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 26

A tax deed or title, even though invalid, generally constitutes color of title on which adverse possession under color of title may be based.¹ However, for a person to acquire title to land through adverse possession, even when relying on an invalid tax deed or title as color of title, that person must have made an actual entry on the land and taken actual possession of at least a part of it.²

Possession under an invalid tax deed need not be by the grantee personally to ripen into title by adverse possession but may be through an agent, licensee, or relative acting for the grantee.³

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Footnotes

¹ [§§ 126, 127.](#)

² [Veitch v. Hard](#), 200 Ala. 77, 75 So. 405 (1917); [Kirker v. Daniels](#), 73 Ark. 263, 83 S.W. 912 (1904); [Scott v. Ramseir](#), 61 Colo. 250, 156 P. 1094 (1916); [Hempel v. Consolidated Land Co.](#), 69 Fla. 277, 67 So. 915 (1915); [Gilmore v. Frost-Johnson Lumber Co.](#), 139 La. 354, 71 So. 536 (1916); [John Widdicombe Co. v. Card](#), 218 Mich. 72, 187 N.W. 308, 22 A.L.R. 545 (1922).

³ [Hanna v. Ferrier](#), 265 Ala. 450, 91 So. 2d 700 (1956).

As to possession through an agent, licensee, or relative, generally, see [§ 20](#).

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3 Am. Jur. 2d Adverse Possession § 24

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c. Possession Under Color of Title; Constructive Possession

§ 24. Constructive possession

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 14, 25

The constructive possession of real property is presumed to be in the holder of the record title¹ until there is an ouster and expulsion of the record owner by actual adverse possession² or actual hostile possession by another under a claim of title.³ A true owner who is in actual possession of a part of the land, claiming title to the whole, has the constructive possession of all of the land that is not in the actual possession of an intruder.⁴

Under the rule that the constructive possession of property is in the holder of the record title, a grantee of property is in constructive possession, although the grantor remains in actual possession, in the absence of evidence of any hostile claim by the grantor against the grantee.⁵

Constructive adverse possession of land ordinarily only occurs if actual possession of at least part of a tract has been taken under color of title.⁶ In the absence of adverse occupancy under color of title, there can be no constructive adverse possession of property on the part of an adverse claimant; under a claim of right, the law requires actual possession of all of the property claimed.⁷

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Footnotes

1 Ennis v. Stanley, 346 Mich. 296, 78 N.W.2d 114 (1956).

2 Salvis v. Lawyer, 73 Idaho 469, 253 P.2d 589 (1953); Luloff v. Blackburn, 274 Mont. 64, 906 P.2d 189 (1995); Wiechers v. McCormick, 122 A.D. 860, 107 N.Y.S. 835 (2d Dep't 1907).

3 In an adverse possession action, constructive possession can never be ousted by anything less than an actual possession maintained for the necessary period of time. [Davis v. Mayberry, 2010 OK CIV APP 94, 241 P.3d 663 \(Div. 1 2010\)](#).

4 John T. Clark Realty Co. v. Harris, 253 A.D. 325, 253 A.D. 908, 2 N.Y.S.2d 137 (2d Dep't 1938); Laird Properties New England Land Syndicate v. Mad River Corp., 131 Vt. 268, 305 A.2d 562 (1973).

5 Turnipseed v. Moseley, 248 Ala. 340, 27 So. 2d 483, 170 A.L.R. 882 (1946); Bettack v. Conachen, 235 Wis. 559, 294 N.W. 57 (1940).

6 Miller v. Hewell, 271 Ala. 286, 123 So. 2d 126 (1960).

7 Long v. Ladd, 273 Ala. 410, 142 So. 2d 660 (1962); Smith v. Pittston Co., 203 Va. 408, 124 S.E.2d 1 (1962).
Griffin v. Isgrig, 227 Ark. 931, 302 S.W.2d 777 (1957).

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3 Am. Jur. 2d Adverse Possession § 25

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3. Particular Acts

a. In General

§ 25. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 16(1) to 17, 20, 24

Forms

Forms relating to acts of possession and ownership, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession
[Westlaw® Search Query]

Acts of ownership by the adverse claimant that are of such a nature as the claimant would exercise over his or her own property and would not exercise over that of another, and amount to such dominion over the property as to which it is reasonably adapted, ordinarily constitute acts of actual possession.¹ Specifically, actual possession, for the purposes of an adverse possession claim, may be indicated by the claimant's receipt of the rents, issues, and profits of the property;² conveyance of the property;³ grant of permission to others to use the property;⁴ leasing of the property;⁵ encumbrance of the property;⁶ quarrying of the property;⁷ building on the property;⁸ improvement of the property;⁹ or maintenance of the property.¹⁰ On the other hand, the uses of property for hunting,¹¹ fishing,¹² camping,¹³ and other recreational purposes¹⁴ ordinarily are not sufficient acts of dominion to constitute actual possession for adverse possession purposes. Likewise, the surveying and marking of a boundary is not an act sufficient to constitute possession.¹⁵

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Footnotes

1 Robertson v. Lees, 87 Ark. App. 172, 189 S.W.3d 463 (2004); Monroe v. Rawlings, 331 Mich. 49, 49 N.W.2d 55 (1951).

2 Warner v. Wickizer, 1930 OK 419, 146 Okla. 232, 294 P. 130 (1930).

3 Stiff v. Cobb, 126 Ala. 381, 28 So. 402 (1900); Louisa County Conservation Bd. v. Malone, 778 N.W.2d 204 (Iowa Ct. App. 2009); Webb v. Drewrey, 4 So. 3d 1078 (Miss. Ct. App. 2009); Warner v. Wickizer, 1930 OK 419, 146 Okla. 232, 294 P. 130 (1930).

4 Webb v. Drewrey, 4 So. 3d 1078 (Miss. Ct. App. 2009).

5 Family Land & Inv. Co. v. Williams, 273 Ala. 273, 138 So. 2d 696 (1961); Warner v. Wickizer, 1930 OK 419, 146 Okla. 232, 294 P. 130 (1930).

6 Stiff v. Cobb, 126 Ala. 381, 28 So. 402 (1900); Warner v. Wickizer, 1930 OK 419, 146 Okla. 232, 294 P. 130 (1930).

7 N.A.S. Holdings, Inc. v. Pafundi, 169 Vt. 437, 736 A.2d 780 (1999).

8 Crown Credit Co., Ltd. v. Bushman, 170 Ohio App. 3d 807, 2007-Ohio-1230, 869 N.E.2d 83 (3d Dist. Auglaize County 2007); Draszt v. Naccarato, 146 Wash. App. 536, 192 P.3d 921 (Div. 3 2008).

9 Vezey v. Green, 35 P.3d 14 (Alaska 2001) (permanent improvements); Louisa County Conservation Bd. v. Malone, 778 N.W.2d 204 (Iowa Ct. App. 2009); Norman v. Smedley, 1961 OK 143, 363 P.2d 839 (Okla. 1961); Pioneer Investment & Trust Co. v. Board of Education of Salt Lake City, 35 Utah 1, 99 P. 150 (1909); Illinois Steel Co. v. Bilot, 109 Wis. 418, 84 N.W. 855 (1901).

10 Louisa County Conservation Bd. v. Malone, 778 N.W.2d 204 (Iowa Ct. App. 2009); Davis Estates, L.L.C. v. Junge, 394 S.W.3d 436 (Mo. Ct. App. S.D. 2013).

11 Concord Corp. v. Huff, 144 Colo. 72, 355 P.2d 73 (1960); Moore v. Stills, 307 S.W.3d 71 (Ky. 2010), as corrected, (Apr. 7, 2010); Skillman v. Harvey, 898 So. 2d 431 (La. Ct. App. 1st Cir. 2004), writ denied, 897 So. 2d 610 (La. 2005).

12 Concord Corp. v. Huff, 144 Colo. 72, 355 P.2d 73 (1960); Moore v. Stills, 307 S.W.3d 71 (Ky. 2010), as corrected, (Apr. 7, 2010).

13 Steele v. Blankenship, 2010 Ark. App. 86, 377 S.W.3d 293 (2010); Concord Corp. v. Huff, 144 Colo. 72, 355 P.2d 73 (1960).

14 Moore v. Stills, 307 S.W.3d 71 (Ky. 2010), as corrected, (Apr. 7, 2010).
As to seasonal use, generally, see § 69.

15 Concord Corp. v. Huff, 144 Colo. 72, 355 P.2d 73 (1960); Moore v. Stills, 307 S.W.3d 71 (Ky. 2010), as corrected, (Apr. 7, 2010).

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3 Am. Jur. 2d Adverse Possession § 26

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3. Particular Acts

a. In General

§ 26. Combination of acts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 16(1)

A.L.R. Library

[Grazing of livestock or gathering of natural crop as fulfilling traditional elements of adverse possession, 48 A.L.R.3d 818](#)

All acts of a possessory nature by an adverse claimant are to be considered collectively, rather than independently, in determining the sufficiency of actual possession for purposes of an adverse possession claim.¹ Adverse possession thus may be evidenced by a combination of various acts, such as using the land for grazing and the removal of timber;² grazing and gathering a natural crop;³ grazing and cultivation;⁴ grazing, cultivation, and removal of timber;⁵ grazing, gathering a natural crop, and cultivation;⁶ grazing, gathering a natural crop, and removal of timber;⁷ gathering a natural crop and cultivation;⁸ gathering a natural crop, cultivation, and removal of timber;⁹ or cultivation and removal of timber.¹⁰

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Footnotes

1 Long v. Ladd, 273 Ala. 410, 142 So. 2d 660 (1962).
2 Kayser v. Dixon, 309 So. 2d 526 (Miss. 1975); Breuer v. Covert, 47 Or. App. 225, 614 P.2d 1169 (1980).
3 McKelvy v. Cooper, 165 Colo. 102, 437 P.2d 346 (1968).
4 Suire v. Primeaux, 363 So. 2d 963 (La. Ct. App. 3d Cir. 1978), writ denied, 365 So. 2d 243 (La. 1978);
Johnson v. Bell, 666 P.2d 308 (Utah 1983).
5 Dierks Lumber & Coal Co. v. Vaughn, 131 F. Supp. 219 (E.D. Ark. 1954), judgment aff'd, 221 F.2d 695
(8th Cir. 1955); Hoppe v. Sauter, 416 S.W.2d 912 (Tex. Civ. App. Texarkana 1967), writ refused n.r.e., (Oct.
4, 1967).
6 Illinois Ry. Museum, Inc. v. Siegel, 132 Ill. App. 2d 77, 266 N.E.2d 724 (2d Dist. 1971).
7 Wheeler v. Gorman, 80 Minn. 462, 83 N.W. 442 (1900); Clithero v. Fenner, 122 Wis. 356, 99 N.W. 1027
(1904).
8 Ely v. Fuson, 297 Ky. 325, 180 S.W.2d 90 (1944).
9 May v. Sorrell, 153 Ga. 47, 111 S.E. 810 (1922).
10 G.S. Baxter & Co. v. Wetherington, 128 Ga. 801, 58 S.E. 467 (1907).

3 Am. Jur. 2d Adverse Possession § 27

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§ 27. Residence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 0-18

Maintaining a residence on property is an act of actual possession for purposes of establishing a claim of adverse possession.¹ Generally, however, actually residing on the property claimed is not necessary to constitute actual possession and to establish title by adverse possession² because a person may be in possession of real estate without residing on it.³ Statutory provisions, however, may have an effect on whether residence on the property is required.⁴

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Footnotes

1 [Lilly v. Palmer](#), 495 So. 2d 522 (Ala. 1986); [La Due v. Currell](#), 201 Va. 200, 110 S.E.2d 217 (1959).

2 [Wadsworth v. Thompson](#), 912 So. 2d 529 (Ala. Civ. App. 2005); [Whittington v. Cameron](#), 385 Ill. 99, 52 N.E.2d 134, 150 A.L.R. 551 (1943); [Clear Lake Amusement Corp. v. Lewis](#), 236 Iowa 132, 18 N.W.2d 192 (1945); [Rucker Properties, L.L.C. v. Friday](#), 41 Kan. App. 2d 664, 204 P.3d 671 (2009); [Morris v. Thomas Forman Co.](#), 206 Ky. 191, 266 S.W. 873 (1924); [Hibbard v. Robert G. Fromkin Woolen Corp.](#), 156 Me. 433, 165 A.2d 49 (1960); [Monroe v. Rawlings](#), 331 Mich. 49, 49 N.W.2d 55 (1951); [Fredericksen v. Henke](#), 167 Minn. 356, 209 N.W. 257, 46 A.L.R. 785 (1926); [Bilby v. Wire](#), 77 N.W.2d 882 (N.D. 1956); [Herron v. Swarts](#), 1960 OK 53, 350 P.2d 314 (Okla. 1960); [Jones v. Leagan](#), 384 S.C. 1, 681 S.E.2d 6 (Ct. App. 2009); [Hardy v. Bumpstead](#), 41 S.W.2d 226, 76 A.L.R. 1488 (Tex. Comm'n App. 1931); [Campbell v. Reed](#), 134 Wash. App. 349, 139 P.3d 419 (Div. 2 2006).

3 [Herron v. Swarts](#), 1960 OK 53, 350 P.2d 314 (Okla. 1960).

3 Am. Jur. 2d Adverse Possession § 28

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b. Cultivation, Pasturing, or Timber Cutting

§ 28. Cultivation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 21

A.L.R. Library

[Grazing of livestock or gathering of natural crop as fulfilling traditional elements of adverse possession, 48 A.L.R.3d 818](#)

The cultivation of land is a sufficient act to constitute actual possession of the land for purposes of adverse possession.¹ The cultivation of land may take the form of growing crops,² or farming,³ or setting out an orchard and caring for the trees.⁴ There is authority that holds that regular mowing of a property constitutes cultivation for purposes of adverse possession⁵ although other authority holds that mowing is not a sufficient act to constitute actual possession.⁶ Sporadic cultivation does not constitute adverse possession.⁷

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Footnotes

1 Kendrick v. Kendrick, 10 So. 3d 1000 (Ala. Civ. App. 2006); Bailey v. Moten, 289 Ga. 897, 717 S.E.2d 205
2 (2011); McNeil v. Kitchens, 397 Ill. App. 3d 375, 341 Ill. Dec. 616, 931 N.E.2d 224 (4th Dist. 2010); Hardy
3 v. Bumpstead, 41 S.W.2d 226, 76 A.L.R. 1488 (Tex. Comm'n App. 1931); Grayson Roper Ltd. Partnership
4 v. Finlinson, 782 P.2d 467 (Utah 1989); Gross v. Robinson, 36 Wyo. 392, 256 P. 80, 57 A.L.R. 578 (1927).
5 Cheek v. Wainwright, 246 Ga. 171, 269 S.E.2d 443 (1980).
6 Wadsworth v. Thompson, 912 So. 2d 529 (Ala. Civ. App. 2005).
7 Davies v. Wickstrom, 56 Wash. 154, 105 P. 454 (1909).
8 Lewis v. Aslesen, 2001 SD 131, 635 N.W.2d 744 (S.D. 2001).
9 Bailey v. Moten, 289 Ga. 897, 717 S.E.2d 205 (2011); Crown Credit Co., Ltd. v. Bushman, 170 Ohio App.
10 3d 807, 2007-Ohio-1230, 869 N.E.2d 83 (3d Dist. Auglaize County 2007).
11 Moore v. Stone, 255 S.W.3d 284 (Tex. App. Waco 2008).

3 Am. Jur. 2d Adverse Possession § 29

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§ 29. Cultivation—Necessity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 0-21

Although the cultivation of land is evidence of actual possession,¹ cultivation generally is not necessary to establish actual possession for purposes of adverse possession.² Some statutory provisions, however, may require the cultivation of real property as one of a limited number of acts to establish title by adverse possession.³

Practice Tip:

Under a statute recognizing adverse possession of land if it has been protected by a substantial enclosure or if it has been usually cultivated or improved, the adverse claimant need only prove possession by one of the means stated.⁴

Footnotes

1 § 28.

2 Rucker Properties, L.L.C. v. Friday, 41 Kan. App. 2d 664, 204 P.3d 671 (2009); Monroe v. Rawlings, 331 Mich. 49, 49 N.W.2d 55 (1951); Campbell v. Reed, 134 Wash. App. 349, 139 P.3d 419 (Div. 2 2006).

3 Lewis v. Village of Lyons, 54 A.D.2d 488, 389 N.Y.S.2d 674 (4th Dep't 1976); Richey v. Miller, 142 Tex. 274, 177 S.W.2d 255, 170 A.L.R. 832 (1944); Central Pac. Ry. Co. v. Tarpey, 51 Utah 107, 168 P. 554, 1 A.L.R. 1319 (1917); Camacho v. Trimble Irrevocable Trust, 2008 WI App 112, 313 Wis. 2d 272, 756 N.W.2d 596 (Ct. App. 2008).

4 Lindgren v. Martin, 130 Idaho 854, 949 P.2d 1061 (1997); Swecker v. Dorn, 181 Mont. 436, 593 P.2d 1055 (1979); Lewis v. Aslesen, 2001 SD 131, 635 N.W.2d 744 (S.D. 2001).

3 Am. Jur. 2d Adverse Possession § 30

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b. Cultivation, Pasturing, or Timber Cutting

§ 30. Pasturing or grazing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 22

A.L.R. Library

[Grazing of livestock or gathering of natural crop as fulfilling traditional elements of adverse possession, 48 A.L.R.3d 818](#)

Using land for the pasturing¹ or grazing² of animals may be sufficient to constitute the possession necessary for adverse possession.

Some authorities hold that if grazing or pasturing is relied on as evidence of actual use of land to support a claim of adverse possession, it must be accompanied by the enclosure³ or designed enclosure⁴ of the land. Such authorities thus hold that one does not have adverse possession of unenclosed land by using it for grazing or pasturing.⁵ Other authorities, however, do not require that the grazing or pasturing be accompanied by the enclosure of the land and hold that a claimant may be in adverse possession of unenclosed land by using it for grazing or pasturing.⁶

The adverse possession of lands by grazing is limited to those areas that are reasonably suited for grazing purposes.⁷

Practice Tip:

If the claimant has enclosed the land with a fence, it is not necessary to show that any animal actually grazed up to the fence line if the claimants and their predecessors claimed all the land within the fence and treated it as their property to use if they wished.⁸

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Footnotes

- 1 [Kendrick v. Kendrick](#), 10 So. 3d 1000 (Ala. Civ. App. 2006); [Fessler v. Thompson](#), 1942 OK 172, 191 Okla. 450, 130 P.2d 513 (1942); [Hoffman v. Freeman Land and Timber, LLC](#), 329 Or. 554, 994 P.2d 106 (1999).
- 2 [Tillison v. Taylor](#), 572 So. 2d 429 (Ala. 1990); [Munro v. Eshe](#), 113 Colo. 19, 156 P.2d 700 (1944); [Quarles v. Arcega](#), 114 N.M. 502, 841 P.2d 550 (Ct. App. 1992); [Hoffman v. Freeman Land and Timber, LLC](#), 329 Or. 554, 994 P.2d 106 (1999).
- 3 [Fadem v. Kimball](#), 1979 OK CIV APP 40, 612 P.2d 287 (Ct. App. Div. 1 1979).
The pasturing of animals within a substantial enclosure is sufficient to establish the elements of adverse possession. [Helm v. Clark](#), 2010 WY 168, 244 P.3d 1052 (Wyo. 2010).
- 4 [Moore v. Stone](#), 255 S.W.3d 284 (Tex. App. Waco 2008).
- 5 [England v. Ally Ong Hing](#), 105 Ariz. 65, 459 P.2d 498 (1969); [Smith v. Town of Fowler](#), 138 Colo. 359, 333 P.2d 1034 (1959); [Trager v. Elliot](#), 106 Kan. 228, 187 P. 875 (1920).
- 6 [Cleveland v. Dow Chemical Co.](#), 168 Colo. 388, 451 P.2d 741 (1969); [Springer v. Durette](#), 217 Or. 196, 342 P.2d 132 (1959).
- 7 [Adams v. Lamicq](#), 118 Utah 209, 221 P.2d 1037 (1950).
- 8 [Whittemore v. Amator](#), 148 Ariz. 173, 713 P.2d 1231 (1986).

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3 Am. Jur. 2d Adverse Possession § 31

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b. Cultivation, Pasturing, or Timber Cutting

§ 31. Removing timber or timber-based crops

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 0-23

A.L.R. Library

[Grazing of livestock or gathering of natural crop as fulfilling traditional elements of adverse possession, 48 A.L.R.3d 818](#)

Forms

Forms relating to timber, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [[Westlaw® Search Query](#)]

It has been held that cutting timber may be sufficient to establish the dominion over property necessary to a claim of adverse possession,¹ but it has also been held that the cutting of timber² or trees³ is not sufficient evidence of actual possession.

If the land in question is woodland, there must ordinarily be such continuous and persistent cutting of timber or wood from the tract as to evidence a claim of ownership and be an advertisement to the world that the party is occupying the entire

tract.⁴ Occasional or sporadic entries on land for the purpose of cutting timber are not sufficient to constitute actual possession to establish title by adverse possession.⁵

Tree farming, when carried out in a manner as to attract the attention of those entitled to notice, can be evidence of actual possession for purposes of adverse possession.⁶ Making turpentine, using maple groves, or gathering nuts or similar wild crops also may amount to actual possession of timber lands if the acts amount to more than a trespass.⁷

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Footnotes

1 [Grooms v. Mitchell, 426 So. 2d 820 \(Ala. 1983\); Cousino v. Western Shore Lumber Co., 179 Cal. 1, 175 P. 406 \(1918\); McRae v. Ketchum, 138 Fla. 610, 189 So. 853 \(1939\); Maine Gravel Services, Inc. v. Haining, 1998 ME 18, 704 A.2d 417 \(Me. 1998\); Berry v. Coppersmith, 212 N.C. 50, 193 S.E. 3 \(1937\); Bardin v. Commercial Ins. & Trust Co., 82 S.C. 358, 64 S.E. 165 \(1909\).](#)

2 [Mills v. Kelley, 214 Ga. 403, 105 S.E.2d 316 \(1958\).](#)
Adverse possession could not be acquired of land adjoining the land actually possessed, under a conveyance amounting merely to color of title to the two adjoining tracts, merely by cutting timber on it and warning trespassers off a few times over a period of years. [Huston v. Graves, 213 S.W. 77, 5 A.L.R. 423 \(Mo. 1919\).](#)

3 [Bailey v. Moten, 289 Ga. 897, 717 S.E.2d 205 \(2011\).](#)
Even if an adverse claimant could establish that her husband had cleared and sold cedar trees from the tract, that was not sufficient to establish actual and visible appropriation of the land as required for adverse possession. [Rhodes v. Cahill, 802 S.W.2d 643 \(Tex. 1990\).](#)

4 [Grooms v. Mitchell, 426 So. 2d 820 \(Ala. 1983\).](#)

5 [Bergen v. Dixon, 527 So. 2d 1274 \(Ala. 1988\); Dixon v. Dixon, 97 Ga. App. 54, 102 S.E.2d 74 \(1958\); Moore v. Stills, 307 S.W.3d 71 \(Ky. 2010\), as corrected, \(Apr. 7, 2010\); Kirby Lumber Corp. v. Lindsey, 455 S.W.2d 733 \(Tex. 1970\).](#)

6 [Cheek v. Wainwright, 246 Ga. 171, 269 S.E.2d 443 \(1980\).](#)

7 [Richbourg v. Rose, 53 Fla. 173, 44 So. 69 \(1907\); Carson v. Keith, 1967 OK 206, 433 P.2d 956 \(Okla. 1967\).](#)

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3 Am. Jur. 2d Adverse Possession § 32

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§ 32. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 0-19

A.L.R. Library

[Fence as factor in fixing location of boundary line—modern cases, 7 A.L.R.4th 53](#)

Forms

Forms relating to enclosure, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [\[Westlaw® Search Query\]](#)

The enclosure of land, either of itself or in connection with other acts of dominion, may constitute the possession necessary for adverse possession.¹ A fence is an outstanding symbol of possession,² and the fencing in of property is very decisive in determining possession for purposes of proving adverse possession.³ Fencing an area of land is an act of ownership,⁴ and the

actual possession of property necessary for a claim of adverse possession can be established by a designedly enclosed fence⁵ or a fence that defines the limits of the claim and warns the true owner of the necessity for him or her to take protective measures.⁶

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Footnotes

1 Faulks v. Schrider, 114 F.2d 587 (App. D.C. 1940); City of Dermott v. Stinson, 144 Ark. 208, 222 S.W. 54, 9 A.L.R. 1367 (1920); Ross v. Burkhard Inv. Co., 90 Cal. App. 201, 265 P. 982 (3d Dist. 1928); Marvel v. Barley Mill Road Homes, 34 Del. Ch. 417, 104 A.2d 908 (1954); McNeil v. Ketchens, 397 Ill. App. 3d 375, 341 Ill. Dec. 616, 931 N.E.2d 224 (4th Dist. 2010); Pittman v. Simmons, 408 So. 2d 1384 (Miss. 1982); Dumproff v. Driskill, 376 S.W.3d 680 (Mo. Ct. App. S.D. 2012), reh'g and/or transfer denied, (Apr. 19, 2012); Robin v. Brown, 308 Pa. 123, 162 A. 161 (1932); Davies v. Wickstrom, 56 Wash. 154, 105 P. 454 (1909); Clithero v. Fenner, 122 Wis. 356, 99 N.W. 1027 (1904); Kimball v. Turner, 993 P.2d 303 (Wyo. 1999).
The mere existence of a fence around the property for a period of at least 55 years offered a substantial basis for holding that the defendant property owners held title to the property within the fence by adverse possession. *Roy v. Kayser*, 501 So. 2d 1110 (Miss. 1987).

2 *Cousins v. McNeil*, 62 So. 3d 1039 (Ala. Civ. App. 2010).

3 *Foust v. Metcalf*, 338 S.W.3d 457 (Tenn. Ct. App. 2010).

4 *Steele v. Blankenship*, 2010 Ark. App. 86, 377 S.W.3d 293 (2010); *Smith v. Tippett*, 569 A.2d 1186 (D.C. 1990); *Horky v. Schriner*, 215 Neb. 498, 340 N.W.2d 1 (1983); *Cumulus Broadcasting, Inc. v. Shim*, 226 S.W.3d 366 (Tenn. 2007); *DeArman v. Surls*, 618 S.W.2d 88 (Tex. Civ. App. Tyler 1981), writ refused n.r.e., (Sept. 16, 1981).

5 *Myers v. Wright*, 224 S.W.3d 466 (Tex. App. Dallas 2007).

6 *Crown Credit Co., Ltd. v. Bushman*, 170 Ohio App. 3d 807, 2007-Ohio-1230, 869 N.E.2d 83 (3d Dist. Auglaize County 2007).

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3 Am. Jur. 2d Adverse Possession § 33

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West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 0-19

Although the enclosure of land is evidence of possession,¹ the enclosure of property is not necessary to demonstrate possession for purposes of an adverse possession claim.² It is therefore not essential to the acquisition of title to land by adverse possession that it be enclosed³ or fenced.⁴ Some statutory provisions, however, may require enclosure as one of a limited number of acts, ordinarily written in the disjunctive, to establish title by adverse possession.⁵ Furthermore, in cases involving a claim of adverse possession to wild or woodlands, some authorities may require enclosure as one of a limited number of acts to establish title by adverse possession.⁶

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Footnotes

¹ [§ 32.](#)

² [Wilson v. Price](#), 195 S.W.3d 661 (Tenn. Ct. App. 2005).

³ [Darby v. Robbins](#), 409 So. 2d 722 (Ala. 1981); [Truck-Trailer Supply Co. v. Farmer](#), 181 Kan. 396, 311 P.2d 1004 (1957); [Blickenstaff v. Bromley](#), 243 Md. 164, 220 A.2d 558 (1966); [Wanha v. Long](#), 255 Neb. 849, 587 N.W.2d 531 (1998); [Kimble v. Allen](#), 1956 OK 135, 298 P.2d 1042 (Okla. 1956); [Norgard v. Busher](#), 220 Or. 297, 349 P.2d 490, 80 A.L.R.2d 1161 (1960); [Short v. Lyness](#), 572 S.W.2d 116 (Tex. Civ. App. Waco 1978).

4 Boyd v. Roberts, 98 Ark. App. 385, 255 S.W.3d 895 (2007); Baudin v. Charrier, 137 So. 2d 440 (La. Ct. App. 3d Cir. 1962); Monroe v. Rawlings, 331 Mich. 49, 49 N.W.2d 55 (1951); El Cerrito, Inc. v. Ryndak, 60 Wash. 2d 847, 376 P.2d 528 (1962).
5 Acquisition of title by adverse possession to a strip of tidelands occupied by the claimants under a mistaken belief that their land extended there was not precluded by the claimants' failure to construct a fence on the tidelands to separate the land claimed by them from the abutting land. *Norgard v. Busher*, 220 Or. 297, 349 P.2d 490, 80 A.L.R.2d 1161 (1960).
6 Lindgren v. Martin, 130 Idaho 854, 949 P.2d 1061 (1997); *Almeida v. Wells*, 74 A.D.3d 1256, 904 N.Y.S.2d 736 (2d Dep't 2010); *Robin v. Brown*, 308 Pa. 123, 162 A. 161 (1932); *Central Pac. Ry. Co. v. Tarpey*, 51 Utah 107, 168 P. 554, 1 A.L.R. 1319 (1917); *Camacho v. Trimble Irrevocable Trust*, 2008 WI App 112, 313 Wis. 2d 272, 756 N.W.2d 596 (Ct. App. 2008).
6 Sea Pines Condominium III Ass'n v. Steffens, 61 Mass. App. Ct. 838, 814 N.E.2d 752 (2004).

3 Am. Jur. 2d Adverse Possession § 34

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§ 34. Adequacy of enclosure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 0-19

If an enclosure of property is relied on as the act of possession in an adverse possession claim, the enclosure should be appropriate for the purposes to which the premises are adapted or for which the occupant may desire to use them.¹ An enclosure, for purposes of a possessory action for land determined by an enclosure, is not limited to fences and walls.²

The enclosure, like other acts of possession, must be sufficient to "fly the flag" over the land and put the true owner on notice that the property is held under an adverse claim of ownership.³ A fence, even if it is insufficient to turn livestock, may be sufficient to "fly the flag" and put the owner on notice of adverse possession.⁴ In fact, an enclosure having no purpose of physical exclusion may be sufficient to indicate the boundaries of an adverse claim even though it is only a mere furrow turned with a plow around the land or a line marked by cutting away the brush.⁵ Full⁶ or complete⁷ enclosure of the land is not required.

Observation:

Although enclosing land within a fence is sufficient to raise the flag of adverse possession, a fence kept simply for convenience has no effect upon the true boundary between tracts of land because, unlike a boundary fence, a fence of convenience gives rise to permissive use and permissive use will not support a claim for adverse possession.⁸

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Footnotes

1 Robin v. Brown, 308 Pa. 123, 162 A. 161 (1932); Illinois Steel Co. v. Bilot, 109 Wis. 418, 84 N.W. 855 (1901).

2 Allen v. Belgard, 925 So. 2d 1275 (La. Ct. App. 3d Cir. 2006).

3 Steele v. Blankenship, 2010 Ark. App. 86, 377 S.W.3d 293 (2010); Double J Farmlands, Inc. v. Paradise Baptist Church, 999 So. 2d 826 (Miss. 2008); Seavey v. Williams, 97 Or. 310, 191 P. 779 (1920); Robin v. Brown, 308 Pa. 123, 162 A. 161 (1932). Evidence that a fence had been considered the boundary by both parties and that the adverse possessor had openly used the land for pasture and a garden was sufficient to satisfy the element of possession to claim the property between the surveyed boundary and the fence. Johnson v. Roberts, 532 S.W.2d 530 (Mo. Ct. App. 1976).

4 Grayson v. Robinson, 240 Miss. 59, 126 So. 2d 247 (1961).

5 Hurt v. Given, 445 So. 2d 549 (Ala. 1983); Sherrard v. Henry, 88 W. Va. 315, 106 S.E. 705, 21 A.L.R. 645 (1921); Illinois Steel Co. v. Bilot, 109 Wis. 418, 84 N.W. 855 (1901).

6 Rudder v. Mamanasco Lake Park Ass'n, Inc., 93 Conn. App. 759, 890 A.2d 645 (2006).

7 Madson v. TBT Ltd. Liability Co., 12 Neb. App. 773, 686 N.W.2d 85 (2004). A fence's existence can support an adverse-possession claim even if the fence does not completely separate disputed property from other land; instead, what matters is whether the partial fencing serves to visibly delineate the claimed area by indicating how it is set off from other property. Tieu v. Morgan, 246 Or. App. 364, 265 P.3d 98 (2011).

8 Cook v. Eddy, 2008 WY 111, 193 P.3d 705 (Wyo. 2008).

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3 Am. Jur. 2d Adverse Possession § 35

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§ 35. Adequacy of enclosure—Requirement of substantial enclosure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 0-19

An enclosure, as an act of possession in an adverse possession claim, may be required by statute to be substantial.¹ To constitute a substantial enclosure within the meaning of an adverse possession statute, the enclosure must be of a substantial character in the sense of being appropriate and effective to reasonably fit the premises for some use to which they are adapted.² The enclosure need not be absolutely secure³ or need not actually prevent others from entering.⁴ The planting and maintaining a line of trees on the disputed property may constitute a substantial enclosure of the property.⁵

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Footnotes

- 1 [Doyle v. Hafner](#), 12 Misc. 3d 844, 819 N.Y.S.2d 383 (Sup 2006); [Jones v. Leagan](#), 384 S.C. 1, 681 S.E.2d 6 (Ct. App. 2009); [Mixon v. Clark](#), 518 S.W.2d 402 (Tex. Civ. App. Tyler 1974), writ refused n.r.e.
- 2 [Peter H. and Barbara J. Steuck Living Trust v. Easley](#), 2010 WI App 74, 325 Wis. 2d 455, 785 N.W.2d 631 (Ct. App. 2010).
- 3 [Titus v. Chapman](#), 2004 SD 106, 687 N.W.2d 918 (S.D. 2004).
- 4 [Peter H. and Barbara J. Steuck Living Trust v. Easley](#), 2010 WI App 74, 325 Wis. 2d 455, 785 N.W.2d 631 (Ct. App. 2010).
- 5 [Lewis v. Aslesen](#), 2001 SD 131, 635 N.W.2d 744 (S.D. 2001).

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3 Am. Jur. 2d Adverse Possession § 36

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Adverse Possession

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II. Elements and Requisites

C. Actual Possession

3. Particular Acts

c. Enclosure

§ 36. Use of natural barrier as enclosure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  19

Forms

Forms relating to enclosure, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [\[Westlaw® Search Query\]](#)

An enclosure, as an act of possession in an adverse possession claim, may be by natural or artificial marks that give notice of the character and extent of possession.¹ Thus, it is no objection that natural barriers are taken advantage of in constructing an enclosure around land that is adversely possessed.² An adverse claimant may enclose property with natural barriers in conjunction with artificial barriers³ or by natural barriers alone.⁴ Land forming a peninsula that is unfenced, because of its water boundary, therefore may be considered for all practical purposes as enclosed for adverse possession purposes.⁵

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Footnotes

¹ [Marks v. Zimmerman Farms, LLC, 13 So. 3d 768 \(La. Ct. App. 2d Cir. 2009\).](#)

2 Pipes v. Pipes, 343 So. 2d 329 (La. Ct. App. 2d Cir. 1977), writ denied, 345 So. 2d 904 (La. 1977); Castles
v. Lawrence, 203 Mont. 421, 662 P.2d 589 (1983); Cuka v. Jamesville Hutterian Mut. Soc., 294 N.W.2d
419 (S.D. 1980).

3 Castles v. Lawrence, 203 Mont. 421, 662 P.2d 589 (1983).

4 Cuka v. Jamesville Hutterian Mut. Soc., 294 N.W.2d 419 (S.D. 1980).

5 Springer v. Durette, 217 Or. 196, 342 P.2d 132 (1959).

3 Am. Jur. 2d Adverse Possession § 37

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§ 37. Casual fencing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 0-19

If a fence exists before the adverse claimant takes possession of the land and the claimant fails to demonstrate the purpose for which it was erected, then it is a casual fence rather than a fence that designedly encloses an area.¹ If the character of the use of the enclosed land by an adverse claimant is not such as to constitute, of itself, an actual and visible appropriation of the land, that use cannot be aided by a fence that casually creates the enclosure and to the construction of which neither the adverse claimant nor any person under whom the adverse claimant claims has contributed.² In other words, an adverse claimant can derive no aid in establishing the claim from an enclosure casually created by third persons in effecting a purpose of their own and who are strangers to both the claimant and the true owner of the enclosed land.³ A casual fence thus is insufficient to support the actual possession element of a claim for adverse possession.⁴

Repairing or maintaining a casual fence, even for the express purpose of keeping the adverse claimant's animals within the enclosed area, generally does not change a causal fence into a designed enclosure.⁵ A claimant, however, may substantially modify a casual fence and so change its character that the fenced-in area becomes a designed enclosure sufficient to satisfy the actual possession requirement for adverse possession.⁶

Observation:

The fact that an enclosure is formed by casual fencing does not, in and of itself, make the use and occupancy of the enclosure nonadverse.⁷

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Footnotes

- 1 Rudder v. Mamanasco Lake Park Ass'n, Inc., 93 Conn. App. 759, 890 A.2d 645 (2006); Rhodes v. Cahill, 802 S.W.2d 643 (Tex. 1990).
- 2 Rudder v. Mamanasco Lake Park Ass'n, Inc., 93 Conn. App. 759, 890 A.2d 645 (2006); Orsborn v. Deep Rock Oil Corp., 153 Tex. 281, 267 S.W.2d 781 (1954).
- 3 West Production Co. v. Kahanek, 132 Tex. 153, 121 S.W.2d 328 (Comm'n App. 1938).
- 4 Myers v. Wright, 224 S.W.3d 466 (Tex. App. Dallas 2007).
- 5 Rhodes v. Cahill, 802 S.W.2d 643 (Tex. 1990).
- 6 Myers v. Wright, 224 S.W.3d 466 (Tex. App. Dallas 2007).
- 7 Wynn v. Mendoza, 287 S.W.2d 217 (Tex. Civ. App. Galveston 1956), writ refused n.r.e.

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Research References

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 58 to 67, 85(.5) to 85(4)

A.L.R. Library

A.L.R. Index, Adverse Possession

West's A.L.R. Digest, [Adverse Possession](#) 58 to 67, 85(.5) to 85(4)

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3 Am. Jur. 2d Adverse Possession § 38

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1. In General

§ 38. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  58

In order for a party to acquire title to property by adverse possession, the possession of such property must be hostile.¹ The possession of a claimant of real property must be hostile not only as against the true owner² but also as against the world,³ or the claims of all others,⁴ excepting only the government.⁵

CUMULATIVE SUPPLEMENT

Cases:

The purpose of the hostility requirement necessary to establish adverse possession is to provide the title owner notice of the adverse claim through the unequivocal acts of the usurper. [Waterview Towers, Inc. v. 2610 Cropsey Development Corp.](#), 181 A.D.3d 754, 122 N.Y.S.3d 92 (2d Dep't 2020).

One seeking to prove adverse possession must show that unless the adverse claimant is so in possession of the land that he may at any time be sued as trespasser the statute will not run in his favor; and although he may have taken actual possession, if he does not continue there so that he may be sued at any time as a trespasser during the prescriptive bar, he cannot rely on the statute of limitations. [Wallace v. Pack](#), 749 S.E.2d 599 (W. Va. 2013).

[END OF SUPPLEMENT]

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Footnotes

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3 Am. Jur. 2d Adverse Possession § 39

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1. In General

§ 39. Origin and duration

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West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 0-58

An adverse possession claim must be hostile at its inception.¹ Although there are instances wherein the occupancy of land without original intent to claim adversely subsequently became hostile in fact, these instances do not affect the principle that an adverse possession must be hostile from the beginning.² Such hostility must continue for the full statutory period,³ on the part either of the original adverse claimant or of those who claim to hold under such claimant.⁴

A statute specifying the length of time during which an adverse possession must be maintained to ripen into title begins to run at the time the possession of the claimant becomes hostile to that of the owner, which is generally the time of entry.⁵

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Footnotes

- ¹ *Beaver Creek Ranch, L.P. v. Gordman Leverich Ltd. Liability Ltd. Partnership*, 226 P.3d 1155 (Colo. App. 2009); *Bowen v. Serksnas*, 121 Conn. App. 503, 997 A.2d 573 (2010); *Dewitt v. Shea*, 203 Ill. 393, 67 N.E. 761 (1903); *Delacey v. Commercial Trust Co.*, 51 Wash. 542, 99 P. 574 (1909).
- ² *Weston v. Morgan*, 162 S.C. 177, 160 S.E. 436 (1931).
As to permissive possession changing to hostile permission, generally, see § 47.
- ³ *Bowen v. Serksnas*, 121 Conn. App. 503, 997 A.2d 573 (2010); *Weston v. Morgan*, 162 S.C. 177, 160 S.E. 436 (1931); *Nickell v. Southview Homeowners Ass'n*, 167 Wash. App. 42, 271 P.3d 973 (Div. 2 2012), review denied, 174 Wash. 2d 1018, 282 P.3d 96 (2012).
- ⁴ *Weston v. Morgan*, 162 S.C. 177, 160 S.E. 436 (1931).

5 Blumer v. Iowa Railroad Land Co., 129 Iowa 32, 105 N.W. 342 (1905), aff'd, 206 U.S. 482, 27 S. Ct. 769, 51 L. Ed. 1148 (1907); Welner v. Stearns, 40 Utah 185, 120 P. 490 (1911).

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3 Am. Jur. 2d Adverse Possession § 40

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2. What Constitutes Hostile Possession

§ 40. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 58, 67

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[Adverse possession under parol gift of land, 43 A.L.R.2d 6](#)

Hostile possession, for purposes of an adverse possession claim, does not connote or require ill will,¹ malevolence,² animosity,³ or enmity⁴ but rather is an assertion of ownership adverse to that of the true owner.⁵ Hostility of possession means that one in possession of land claims the exclusive right to that land⁶ or occupies it as its owner.⁷ Such possession thus imports that the claimant is in possession as owner, in contradistinction to holding in recognition of or subordination to the true owner.⁸ Possession is hostile if the possessor holds and claims the property as his or her own, whether by mistake or willfully.⁹

To be hostile, the claimant's possession must be clear, distinct, and unequivocal.¹⁰ It must convey the clear message that the possessor intends to possess the land as his or her own.¹¹ Hostile possession must be such as to import a denial of the owner's title¹² or oust the owner from the land.¹³ A claimant's possession of land, to be hostile, thus must be incompatible with¹⁴ or in defiance of the rights of others.¹⁵

It is not necessary that the claimant expressly declare the possession to be hostile¹⁶ or make a showing of force or actual dispute for his or her possession of the property to be hostile.¹⁷ It also is not necessary that the claimant's use of the premises be such as to indicate at all times a hostile occupancy.¹⁸ Further, it is not essential that the use of the adverse claimant be challenged by, and the use continued over the objection of, the true owner.¹⁹ The mere use²⁰ or possession of land, however, does not in and of itself show hostility to the owner.²¹

The determination of whether the character of a possession is hostile, in an adverse possession claim, is determined by the occupant's own views, actions, and intentions and not those of his or her adversary.²²

Practice Tip:

A parol gift of land, when proven by clear and convincing evidence, establishes a presumption that the donee's claim to the property is hostile to the donor.²³

CUMULATIVE SUPPLEMENT

Cases:

"Under a claim of right," as an element of an adverse possession claim, means that the claimant is in possession as owner, with intent to claim the land as its own, and not in recognition of or subordination to the record title owner. *Harvey v. Furrow*, 2014 ME 149, 107 A.3d 604 (Me. 2014).

In order to establish adverse possession, the use of the property must be "hostile," that is without permission and in a manner that is inconsistent with the rights of the true owner. *Waisanen v. Superior Tp.*, 305 Mich. App. 719, 854 N.W.2d 213 (2014).

[END OF SUPPLEMENT]

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Footnotes

¹ *Glover v. Glover*, 92 P.3d 387 (Alaska 2004); *Rorebeck v. Criste*, 1 Ariz. App. 1, 398 P.2d 678 (1965); *Emerson v. Linkinogger*, 2011 Ark. App. 234, 382 S.W.3d 806 (2011); *Mulle v. McCauley*, 102 Conn. App. 803, 927 A.2d 921 (2007); *Estate of Wells v. Estate of Smith*, 576 A.2d 707 (D.C. 1990); *Isham v. Cudlip*, 33 Ill. App. 2d 254, 179 N.E.2d 25 (2d Dist. 1962); *Androkites v. White*, 2010 ME 133, 10 A.3d 677 (Me. 2010); *USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 32 A.3d 88 (2011), cert. granted, 425 Md. 227, 40 A.3d 39 (2012) and judgment aff'd, 429 Md. 199, 55 A.3d 510 (2012); *Mulcahy v. Verhines*, 276 Mich. App. 693, 742 N.W.2d 393 (2007); *Whetstone Baptist Church v. Schilling*, 381 S.W.3d 366 (Mo. Ct. App. S.D. 2012), reh'g and/or transfer denied, (Aug. 22, 2012) and transfer denied, (Oct. 30, 2012); *Wanha v. Long*, 255 Neb. 849, 587 N.W.2d 531 (1998); *Rushing v. Aldridge*, 713 S.E.2d 566 (N.C. Ct. App. 2011);

In re Rights-of-way and Easements Situate in Tp. of Mt. Pleasant, 47 A.3d 166 (Pa. Commw. Ct. 2012), appeal denied, 63 A.3d 1250 (Pa. 2013); Foust v. Metcalf, 338 S.W.3d 457 (Tenn. Ct. App. 2010); Jarvis v. Gillespie, 155 Vt. 633, 587 A.2d 981 (1991); Newport Yacht Basin Ass'n of Condominium Owners v. Supreme Northwest, Inc., 168 Wash. App. 56, 277 P.3d 18 (Div. 1 2012).

2 Whetstone Baptist Church v. Schilling, 381 S.W.3d 366 (Mo. Ct. App. S.D. 2012), reh'g and/or transfer denied, (Aug. 22, 2012) and transfer denied, (Oct. 30, 2012).

3 Mulle v. McCauley, 102 Conn. App. 803, 927 A.2d 921 (2007); Rushing v. Aldridge, 713 S.E.2d 566 (N.C. Ct. App. 2011); El Cerrito, Inc. v. Ryndak, 60 Wash. 2d 847, 376 P.2d 528 (1962).

4 Emerson v. Linkinogger, 2011 Ark. App. 234, 382 S.W.3d 806 (2011); USA Cartage Leasing, LLC v. Baer, 202 Md. App. 138, 32 A.3d 88 (2011), cert. granted, 425 Md. 227, 40 A.3d 39 (2012) and judgment aff'd, 429 Md. 199, 55 A.3d 510 (2012); Estate of Becker v. Murtagh, 19 N.Y.3d 75, 945 N.Y.S.2d 196, 968 N.E.2d 433 (2012); Foust v. Metcalf, 338 S.W.3d 457 (Tenn. Ct. App. 2010).

5 Rorebeck v. Criste, 1 Ariz. App. 1, 398 P.2d 678 (1965); Smith v. Hayden, 772 P.2d 47 (Colo. 1989); Estate of Wells v. Estate of Smith, 576 A.2d 707 (D.C. 1990); Isham v. Cudlip, 33 Ill. App. 2d 254, 179 N.E.2d 25 (2d Dist. 1962); Striefel v. Charles-Keyt-Leaman Partnership, 1999 ME 111, 733 A.2d 984 (Me. 1999); Blickenstaff v. Bromley, 243 Md. 164, 220 A.2d 558 (1966); Whetstone Baptist Church v. Schilling, 381 S.W.3d 366 (Mo. Ct. App. S.D. 2012), reh'g and/or transfer denied, (Aug. 22, 2012) and transfer denied, (Oct. 30, 2012); Wanha v. Long, 255 Neb. 849, 587 N.W.2d 531 (1998); Estate of Becker v. Murtagh, 19 N.Y.3d 75, 945 N.Y.S.2d 196, 968 N.E.2d 433 (2012); In re Rights-of-way and Easements Situate in Tp. of Mt. Pleasant, 47 A.3d 166 (Pa. Commw. Ct. 2012), appeal denied, 63 A.3d 1250 (Pa. 2013); Foust v. Metcalf, 338 S.W.3d 457 (Tenn. Ct. App. 2010); Jarvis v. Gillespie, 155 Vt. 633, 587 A.2d 981 (1991); Calhoun v. Woods, 246 Va. 41, 431 S.E.2d 285 (1993); El Cerrito, Inc. v. Ryndak, 60 Wash. 2d 847, 376 P.2d 528 (1962); Burkhardt v. Smith, 17 Wis. 2d 132, 115 N.W.2d 540 (1962).

6 Rushing v. Aldridge, 713 S.E.2d 566 (N.C. Ct. App. 2011); Camacho v. Trimble Irrevocable Trust, 2008 WI App 112, 313 Wis. 2d 272, 756 N.W.2d 596 (Ct. App. 2008).

7 Agers v. Reynolds, 306 S.W.2d 506 (Mo. 1957); Faulconer v. Williams, 327 Or. 381, 964 P.2d 246 (1998). If the adverse possessor, without the true owner's permission, acted toward the land as if he or she owned it, then his or her claim is hostile. Cowan v. Yeisley, 255 P.3d 966 (Alaska 2011).

8 Newport Yacht Basin Ass'n of Condominium Owners v. Supreme Northwest, Inc., 168 Wash. App. 56, 277 P.3d 18 (Div. 1 2012).

9 Strickland v. Markos, 566 So. 2d 229 (Ala. 1990); Murdock v. Zier, 2006 WY 80, 137 P.3d 147 (Wyo. 2006). As to possession by mistake, generally, see § 50.

10 Consolidated Dist. No. 4 of Jackson County v. Glandon, 363 Mo. 1, 247 S.W.2d 770 (1952); Pritchard v. Lewis, 125 Wis. 604, 104 N.W. 989 (1905).

11 Mulle v. McCauley, 102 Conn. App. 803, 927 A.2d 921 (2007).

12 Wailuku Agribusiness Co., Inc. v. Ah Sam, 114 Haw. 24, 155 P.3d 1125 (2007), as amended without opinion, (Apr. 12, 2007); Striefel v. Charles-Keyt-Leaman Partnership, 1999 ME 111, 733 A.2d 984 (Me. 1999); El Cerrito, Inc. v. Ryndak, 60 Wash. 2d 847, 376 P.2d 528 (1962); Conley v. Conley, 168 W. Va. 500, 285 S.E.2d 140 (1981).

13 As to permissive possession, generally, see § 44.

14 Clark v. Drska, 1 Conn. App. 481, 473 A.2d 325 (1984).

15 Davidson v. Perry, 386 Ill. App. 3d 821, 325 Ill. Dec. 738, 898 N.E.2d 785 (4th Dist. 2008).

16 Rohner v. Beets, 2013 WL 1409875 (Mo. Ct. App. W.D. 2013).

17 Bond v. O'Gara, 177 Mass. 139, 58 N.E. 275 (1900); Pastorino v. City of Detroit, 182 Mich. 5, 148 N.W. 231 (1914); Peters v. St. Louis, 226 Mo. 62, 125 S.W. 1134 (1910); Coquille Mill & Mercantile Co. v. Johnson, 52 Or. 547, 98 P. 132 (1908).

18 Beaver Creek Ranch, L.P. v. Gordman Leverich Ltd. Liability Ltd. Partnership, 226 P.3d 1155 (Colo. App. 2009).

19 Fear v. Barwise, 93 Kan. 131, 143 P. 505 (1914).

20 Peters v. Gillund, 186 S.W.2d 1019 (Tex. Civ. App. Galveston 1945), writ refused w.o.m., (June 13, 1945).

21 Louisa County Conservation Bd. v. Malone, 778 N.W.2d 204 (Iowa Ct. App. 2009).

City of New Orleans v. New Orleans Canal, Inc., 412 So. 2d 975 (La. 1981); Orsburn v. Deep Rock Oil Corp., 153 Tex. 281, 267 S.W.2d 781 (1954).

22 [Emerson v. Linkinogger](#), 2011 Ark. App. 234, 382 S.W.3d 806 (2011).
23 [Vezey v. Green](#), 35 P.3d 14 (Alaska 2001).

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3 Am. Jur. 2d Adverse Possession § 41

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§ 41. Effect of relationship between claimant and owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 60(1), 61 to 64

In determining what amounts to hostility, for purposes of adverse possession, the relation that the adverse possessor occupies with reference to the owner is important¹ and thus may be considered.² The nature of the occupation of property may be sufficient to give notice of its adverse character to interested parties who are strangers and yet not be sufficient as to persons standing in a more intimate relationship.³ For example, the occupation of a family estate by one of the family is so usual that the acts of occupation that would show hostile possession as to strangers are not sufficient to show an adverse holding as to relatives.⁴

If the parties are related, there may be a presumption that the use of the property is permissive rather than hostile.⁵ Further, where there is a close and cooperative relationship between the record owner and the person claiming title through adverse possession, a presumption of hostility may not apply.⁶ A claimant's possession of property, however, may be hostile, even though the claimant is a relative of the true owner, such as where the true owner told the claimant he or she needed to move from the property, but the claimant stated he or she was going to stay.⁷

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Footnotes

¹ [Rudder v. Mamanasco Lake Park Ass'n, Inc.](#), 93 Conn. App. 759, 890 A.2d 645 (2006); [State v. Heard](#), 199 S.W.2d 191 (Tex. Civ. App. Austin 1946), aff'd, 146 Tex. 139, 204 S.W.2d 344 (1947).

As to adverse possession between members of a family, see §§ 169 to 173.

2 Air Plum Island, Inc. v. Society For Preservation of New England Antiquities, 70 Mass. App. Ct. 246, 873
N.E.2d 1159 (2007).

3 Apodaca v. Hernandez, 61 N.M. 449, 302 P.2d 177 (1956).

4 Apodaca v. Hernandez, 61 N.M. 449, 302 P.2d 177 (1956).

5 § 46.

6 Air Stream Corp. v. 3300 Lawson Corp., 99 A.D.3d 822, 952 N.Y.S.2d 608 (2d Dep't 2012), leave to appeal
denied, 2013 WL 1760773 (N.Y. 2013).

7 Sleepy Hollow Ranch LLC v. Robinson, 373 S.W.3d 485 (Mo. Ct. App. S.D. 2012).

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3 Am. Jur. 2d Adverse Possession § 42

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§ 42. Intent

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West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 0-58

In some jurisdictions, for possession to be hostile for the purposes of adverse possession, the claimant must intend to claim title to,¹ or assert dominion over, the property at issue.² For possession to be hostile in such jurisdictions, a claimant must demonstrate a subjective intent to possess the property intending to be its owner and not in subordination to the true owner,³ or must occupy the disputed land with the intent to possess it as his or her own,⁴ or must demonstrate an intention to claim exclusive ownership of the property occupied.⁵ The claimant's intent to possess the disputed land, rather than the intent to take from the true owner, governs whether possession is hostile.⁶ In other words, hostile use or possession does not require an intention to dispossess the rightful owner, or even knowledge that there is one, but rather, there must be an intention to claim the property as one's own to the exclusion of all others.⁷ In such jurisdictions, no matter how hostile to the true owner the possession may be in appearance, it cannot be adverse unless it is accompanied by the intent on the part of the occupant to make it so.⁸

In other jurisdictions, the claimant's subjective intent is irrelevant to hostile possession if his or her acts import a hostile or adverse character to his or her use of the land.⁹

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Footnotes

¹ [Jones v. Miles, 189 N.C. App. 289, 658 S.E.2d 23 \(2008\)](#).

Possession is considered hostile when the adverse possessor intends to claim ownership of the land of another. [Webb v. Drewrey, 4 So. 3d 1078 \(Miss. Ct. App. 2009\)](#).

2 Gilbreath v. Harbour, 24 So. 3d 473 (Ala. Civ. App. 2009).
3 Wiser v. Elliott, 228 Or. App. 489, 209 P.3d 337 (2009).
4 Rohner v. Beets, 2013 WL 1409875 (Mo. Ct. App. W.D. 2013).
5 Trask v. Nozisko, 134 P.3d 544 (Colo. App. 2006).
6 Rohner v. Beets, 2013 WL 1409875 (Mo. Ct. App. W.D. 2013).
7 Kazmir v. Benavides, 288 S.W.3d 557 (Tex. App. Houston 14th Dist. 2009).
8 Baber v. Henderson, 156 Mo. 566, 57 S.W. 719 (1900); Lynch v. Lynch, 236 S.C. 612, 115 S.E.2d 301 (1960).
9 Mavromoustakos v. Padussis, 112 Md. App. 59, 684 A.2d 51 (1996); Totman v. Malloy, 431 Mass. 143, 725 N.E.2d 1045 (2000); Kellison v. McIsaac, 131 N.H. 675, 559 A.2d 834 (1989).

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II. Elements and Requisites

D. Hostile Character of Possession

2. What Constitutes Hostile Possession

§ 43. Intent—Evidence of intent

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 85.58, 85(.5) to 85(3)

In jurisdictions in which intent is required for possession to be hostile for purposes of adverse possession, the intent with which the claimant has held possession ordinarily is determined by what the claimant has done in respect to the property.¹ The intent with which a claimant has held possession thus may be determined from all the surrounding circumstances, especially the claimant's acts.² Specifically, such intent may be inferred from the claimant's acts of dominion over the land.³

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Footnotes

- 1 [Fredericksen v. Henke](#), 167 Minn. 356, 209 N.W. 257, 46 A.L.R. 785 (1926); [Wanha v. Long](#), 255 Neb. 849, 587 N.W.2d 531 (1998); [Thompson v. Griffiths](#), 9 Utah 2d 348, 344 P.2d 983 (1959).
- 2 [Boese v. Crane](#), 182 Kan. 777, 324 P.2d 188 (1958); [Hawkins v. Mahoney](#), 1999 MT 296, 297 Mont. 98, 990 P.2d 776 (1999).
- 3 [Whetstone Baptist Church v. Schilling](#), 381 S.W.3d 366 (Mo. Ct. App. S.D. 2012), reh'g and/or transfer denied, (Aug. 22, 2012) and transfer denied, (Oct. 30, 2012).

3 Am. Jur. 2d Adverse Possession § 44

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3. Permissive Possession

§ 44. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 60(2), 67

Trial Strategy

[Permissive Possession or Use of Land, As Defeating Claim of Adverse Possession or Prescriptive Easement](#), 68 Am. Jur. Proof of Facts 3d 239

Forms

Forms relating to owner consent and prevention of acquisition, generally, see Am. Jur. Legal Forms 2d, Adverse Possession; Am. Jur. Pleading and Practice Forms, Adverse Possession [\[Westlaw® Search Query\]](#)

In order for possession to be hostile, for purposes of adverse possession, the use or possession of the property by the claimant must be without permission asked of, or given by, the true owner.¹ Permissive possession is not hostile or adverse and will not support an adverse possession claim² since permissive possession is not considered to be the possession of the occupant but rather the possession of the party on whose pleasure the permissive possession depends.³ Indeed, "hostile possession" generally

means that the possessor does not have the true owner's permission to be on the land⁴ and has been defined simply as possession without the permission of the true owner.⁵ Hostile possession, as an element of adverse possession, thus is negated by a claimant seeking permission for use of the property from the record owner⁶ or by the true owner's permission to the claimant to be on the land.⁷ Such permission may be either express or implied.⁸

If a right to the use or possession of property is conferred by grant, any use or possession that is reasonably consistent with that grant will be considered permissive and not hostile or adverse.⁹ Thus, possession under a license¹⁰ or an agreement granting the right of occupancy is not hostile or adverse.¹¹ A possessor who holds the property as a tenant therefore does not possess the property hostilely.¹² Even possession under a void license or grant is a permissive use,¹³ and one who enters on land by the owner's permission under a promise or expectation that the occupant will be given the land does not have a hostile holding or possession that will ripen into title.¹⁴ However, a donee who accepts a gift of land asserts a property right that is independent of the record owner's, so his or her use is not permissive.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

With respect to permissive use, entering real property as part of a lease agreement is entering it with permission and with acknowledgment of the owner's superior title and is not entering the land with hostile or adverse intent. [Brown v. Jacobsen Land and Cattle Company](#), 302 Neb. 538, 924 N.W.2d 65 (2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Acampora v. Pearson](#), 899 A.2d 459 (R.I. 2006); [Boykin v. Carbon County Bd. of Com'rs](#), 2005 WY 158, 124 P.3d 677 (Wyo. 2005).
- 2 [Howell v. Bradford](#), 570 So. 2d 643 (Ala. 1990); [Vezey v. Green](#), 35 P.3d 14 (Alaska 2001); [Gregoire v. Redwood City Elementary School Dist.](#), 174 Cal. App. 2d 667, 345 P.2d 99 (1st Dist. 1959); [Downing v. Bird](#), 100 So. 2d 57 (Fla. 1958); [Davidson v. Perry](#), 386 Ill. App. 3d 821, 325 Ill. Dec. 738, 898 N.E.2d 785 (4th Dist. 2008); [Henninger v. Brewster](#), 357 S.W.3d 920 (Ky. Ct. App. 2012); [Striefel v. Charles-Keyt-Leaman Partnership](#), 1999 ME 111, 733 A.2d 984 (Me. 1999); [Warner v. Noble](#), 286 Mich. 654, 282 N.W. 855 (1938); [Cooper v. Carns](#), 263 S.W.3d 729 (Mo. Ct. App. W.D. 2008); [Rushing v. Aldridge](#), 713 S.E.2d 566 (N.C. Ct. App. 2011); [Wilson v. Price](#), 195 S.W.3d 661 (Tenn. Ct. App. 2005); [Fantasia v. Schmuck](#), 183 W. Va. 361, 395 S.E.2d 784 (1990); [Hovendick v. Ruby](#), 10 P.3d 1119 (Wyo. 2000).
- 3 [Arkansas Commemorative Commission v. City of Little Rock](#), 227 Ark. 1085, 303 S.W.2d 569 (1957).
- 4 [Hamlin v. Niedner](#), 2008 ME 130, 955 A.2d 251 (Me. 2008).
- 5 [Cluff v. Bonner County](#), 121 Idaho 184, 824 P.2d 115 (1992); [Mavromoustakos v. Padussis](#), 112 Md. App. 59, 684 A.2d 51 (1996).
- 6 [Air Stream Corp. v. 3300 Lawson Corp.](#), 99 A.D.3d 822, 952 N.Y.S.2d 608 (2d Dep't 2012), leave to appeal denied, 2013 WL 1760773 (N.Y. 2013).
- 7 [Northland Realty, LLC v. Crawford](#), 2008 ME 92, 953 A.2d 359 (Me. 2008); [Quatannens v. Tyrrell](#), 268 Va. 360, 601 S.E.2d 616 (2004); [Herrin v. O'Hern](#), 168 Wash. App. 305, 275 P.3d 1231 (Div. 1 2012).
- 8 [Striefel v. Charles-Keyt-Leaman Partnership](#), 1999 ME 111, 733 A.2d 984 (Me. 1999); [Teel v. Stading](#), 155 Wash. App. 390, 228 P.3d 1293 (Div. 2 2010).
- 9 [Kelley v. Armstrong](#), 102 Ohio St. 478, 132 N.E. 15 (1921).

10 Mulle v. McCauley, 102 Conn. App. 803, 927 A.2d 921 (2007).
11 Hungerford v. Hungerford, 234 Md. 338, 199 A.2d 209 (1964); Stein v. White, 109 Ohio St. 578, 143 N.E.
12 124 (1924); Zimmerman v. Newport, 1966 OK 42, 416 P.2d 622 (Okla. 1966).
13 Glover v. Glover, 92 P.3d 387 (Alaska 2004).
14 Batts v. Greer, 71 N.M. 454, 379 P.2d 443 (1963).
15 Triplett v. Chadwick, 311 S.W.2d 554 (Ky. 1958).
 Vezey v. Green, 35 P.3d 14 (Alaska 2001).

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3 Am. Jur. 2d Adverse Possession § 45

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§ 45. Effect of lengthy or exclusive possession

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 60(2), 67

Trial Strategy

[Permissive Possession or Use of Land, As Defeating Claim of Adverse Possession or Prescriptive Easement](#), 68 Am. Jur. Proof of Facts 3d 239

The possession or use of property by permission will not ripen into title by adverse possession¹ no matter how long it is maintained or continued.² Time alone will not suffice to transform permissive use into legal title.³ Thus, if a party's initial usage of land is found to have been permissive, the continued usage of another party's land will not ripen into adverse possession by the mere passage of time.⁴

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Footnotes

¹ [Connell v. Moody](#), 98 So. 3d 549 (Ala. Civ. App. 2012); [Groth v. Johnson's Dairy Farm, Inc.](#), 124 N.H. 286, 470 A.2d 399 (1983).

² [Comforto v. Skirke](#), 289 Mich. 707, 287 N.W. 353 (1939); [Laurance v. Tucker](#), 160 Or. 474, 85 P.2d 374 (1938); [Boykin v. Carbon County Bd. of Com'rs](#), 2005 WY 158, 124 P.3d 677 (Wyo. 2005).

3 [Baysinger v. Biggers, 100 Ark. App. 109, 265 S.W.3d 144 \(2007\)](#).
As to a possession that is initially permissive changing to a hostile possession if certain requirements are met, generally, see [§ 47](#).

4 [Kendrick v. Kendrick, 10 So. 3d 1000 \(Ala. Civ. App. 2006\)](#).

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3 Am. Jur. 2d Adverse Possession § 46

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§ 46. Presumption of permissiveness

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 60(2), 85(1)

Trial Strategy

[Permissive Possession or Use of Land, As Defeating Claim of Adverse Possession or Prescriptive Easement](#), 68 Am. Jur. Proof of Facts 3d 239

Forms

Forms relating to owner consent and prevention of acquisition, generally, see Am. Jur. Legal Forms 2d, Adverse Possession; Am. Jur. Pleading and Practice Forms, Adverse Possession [\[Westlaw® Search Query\]](#)

The possession or use of another's property is generally presumed to be permissive,¹ and is not presumed to be hostile, for purposes of an adverse possession claim.² In some jurisdictions, a familial relationship between the claimant and the true owner of the property creates a presumption of permissive possession or use,³ and some authority holds that the presumption of

permissive possession or use is stronger when the parties are related.⁴ In other jurisdictions, however, no presumption exists that a close family membership between claimants to property renders the prior use of that property permissive.⁵

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1 [Glover v. Glover, 92 P.3d 387 \(Alaska 2004\); Minor v. Minor, 737 S.E.2d 116 \(N.C. Ct. App. 2012\); Boykin v. Carbon County Bd. of Com'rs, 2005 WY 158, 124 P.3d 677 \(Wyo. 2005\).](#)
Where the property in question is vacant, open, unenclosed, and unimproved, use by an individual other than the landowner is presumed to be permissive. [McMilian v. King County, 161 Wash. App. 581, 255 P.3d 739 \(Div. 1 2011\).](#)
The use of wild and uncultivated land is presumed to be permissive, for purpose of determining whether land was adversely possessed. [D'Angelo v. McNutt, 2005 ME 31, 868 A.2d 239 \(Me. 2005\).](#)

2 [Tidwell v. Strickler, 457 So. 2d 365 \(Ala. 1984\).](#)

3 [Washington v. Washington, 2013 Ark. App. 54, 2013 WL 355972 \(2013\); Pioneer Mill Co., Ltd. v. Dow, 90 Haw. 289, 978 P.2d 727 \(1999\), as amended on denial of reconsideration, \(May 11, 1999\) and as corrected, \(June 13, 2006\); \[Sila v. Saunders, 274 Neb. 809, 743 N.W.2d 641 \\(2008\\); Ransom v. Bebermitz, 172 Vt. 423, 782 A.2d 1155 \\(2001\\).\]\(#\)](#)

4 [Minor v. Minor, 737 S.E.2d 116 \(N.C. Ct. App. 2012\).](#)

5 [Totman v. Malloy, 431 Mass. 143, 725 N.E.2d 1045 \(2000\).](#)

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3 Am. Jur. 2d Adverse Possession § 47

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§ 47. Change to hostile possession

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West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 60(4)

Trial Strategy

[Permissive Possession or Use of Land, As Defeating Claim of Adverse Possession or Prescriptive Easement](#), 68 Am. Jur. Proof of Facts 3d 239

Possession that is permissive in its inception may become hostile for purposes of adverse possession¹ but only when the permission has been withdrawn or when events have occurred indicating that the original permission is no longer obtained.² If the original entry is not hostile, the possession does not become hostile until the adverse claimant disavows the idea of holding for, or in subserviency to, the true owner and actually sets up an exclusive right in the adverse claimant.³ In other words, if the original entry on land is by permission of the owner or under some right or authority derived from the owner, the possession does not become hostile, and adverse possession does not commence, until the permission or authority has been repudiated⁴ and renounced, and the claimant thereafter has assumed the attitude of hostility to any right in the real owner.⁵

To change the character of the possession from permissive to hostile, the disavowal of the record owner's title and the assertion of an adverse claim must be shown by some clear, positive, and unequivocal act brought home to the owner,⁶ such as by an explicit disclaimer.⁷ There must be either actual notice of the hostile claim, or acts or declarations of hostility so manifest and

notorious, or so open and notorious, that actual notice will be presumed, in order to change permissive possession to hostile or adverse possession.⁸

Observation:

In some jurisdictions, where a special relationship exists, the putative adverse possessor must give actual notice to the true owner of the change in status from permissive to adverse.⁹

CUMULATIVE SUPPLEMENT

Cases:

For a permissive use to become adverse possession there must be proof that the permissive user utilized the property in a manner inconsistent with the dedicated/permissive use, or, alternatively, that the permissive user notified the dedicator in a clear, positive and distinct way that it claimed title or ownership other than by dedication or permission. [Batterbee v. Roderick](#), 278 So. 3d 882 (Fla. 2d DCA 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 Isham v. Cudlip, 33 Ill. App. 2d 254, 179 N.E.2d 25 (2d Dist. 1962).
- 2 Barrow v. D & B Valley Associates, LLC, 22 A.3d 1131 (R.I. 2011).
- 3 Calhoun v. Smith, 387 So. 2d 821 (Ala. 1980); Lawse v. Glaha, 253 Iowa 1040, 114 N.W.2d 900 (1962); Humphrey v. Harrison, 646 S.W.2d 340 (Ky. 1982); Hewlett v. Henderson, 431 So. 2d 449 (Miss. 1983); Morrison v. Higbee, 204 Mont. 515, 668 P.2d 1025 (1983); Petsch v. Widger, 214 Neb. 390, 335 N.W.2d 254 (1983); Hyson v. Dodge, 198 Va. 792, 96 S.E.2d 792 (1957); Lindokken v. Paulson, 224 Wis. 470, 272 N.W. 453, 110 A.L.R. 910 (1937); Coumas v. Transcontinental Garage, 68 Wyo. 99, 230 P.2d 748, 41 A.L.R.2d 539 (1951).
- 4 Calhoun v. Smith, 387 So. 2d 821 (Ala. 1980); Walter v. Jones, 15 Ill. 2d 220, 154 N.E.2d 250 (1958); Vitale ex rel. Callaghan v. Witts, 93 A.D.3d 714, 940 N.Y.S.2d 294 (2d Dep't 2012).
- 5 Vitale ex rel. Callaghan v. Witts, 93 A.D.3d 714, 940 N.Y.S.2d 294 (2d Dep't 2012).
- 6 Blalock v. Conzelman, 751 So. 2d 2 (Ala. 1999); Anderson v. Walker, 228 Ark. 113, 306 S.W.2d 318 (1957); Lovejoy v. School Dist. No. 46 of Sedgwick County, 129 Colo. 306, 269 P.2d 1067 (1954); Mullan v. Bank of Pasco County, 101 Fla. 1097, 133 So. 323 (1931); Lawse v. Glaha, 253 Iowa 1040, 114 N.W.2d 900 (1962); Johnson v. Raddohl, 226 Minn. 343, 32 N.W.2d 860 (1948); Rice v. Pritchard, 611 So. 2d 869 (Miss. 1992); Imperial Service Corp. v. Phipps, 205 Neb. 622, 288 N.W.2d 749 (1980); Apodaca v. Hernandez, 61 N.M. 449, 302 P.2d 177 (1956); Killough v. Hinds, 161 Tex. 178, 338 S.W.2d 707 (1960); Kimball v. Turner, 993 P.2d 303 (Wyo. 1999).
- 7 Young Kee Kim v. Douval Corp., 259 Va. 752, 529 S.E.2d 92 (2000).

8 Hanks v. Spann, 33 So. 3d 1234 (Ala. Civ. App. 2009); Emerson v. Linkinogger, 2011 Ark. App. 234, 382 S.W.3d 806 (2011); Estate of Wells v. Estate of Smith, 576 A.2d 707 (D.C. 1990); McDermott v. Boman, 165 Neb. 429, 86 N.W.2d 62 (1957); Hinman v. Barnes, 146 Ohio St. 497, 32 Ohio Op. 564, 66 N.E.2d 911 (1946); Great Southern Life Ins. Co. v. Dodson, 155 S.W.2d 379 (Tex. Civ. App. Amarillo 1941); Hutchinson v. Taft, 2010 WY 5, 222 P.3d 1250 (Wyo. 2010).

9 Lawrence v. Town Of Concord, 439 Mass. 416, 788 N.E.2d 546 (2003).

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3 Am. Jur. 2d Adverse Possession § 48

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§ 48. Change to hostile possession—Evidence of change to hostile use

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 60(4), 85(4)

Trial Strategy

[Permissive Possession or Use of Land, As Defeating Claim of Adverse Possession or Prescriptive Easement](#), 68 Am. Jur. Proof of Facts 3d 239

In determining whether a permissive use has been changed into a hostile use for purposes of adverse possession, the evidence must be strictly construed against the adverse user,¹ and the burden is on the claimant to prove that he or she changed the character of the possession.²

For the purpose of changing permissive possession to hostile possession, mere possession or ordinary acts of ownership that are consistent with the permission are not enough to provide notice of the hostile claim.³ The evidence of adverse holding when the original entry is by permission must be very clear.⁴

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Footnotes

1 Mielke v. Daly Ditches Irr. Dist., 225 Mont. 172, 731 P.2d 927 (1987).

2 Pioneer Mill Co., Ltd. v. Dow, 90 Haw. 289, 978 P.2d 727 (1999), as amended on denial of reconsideration,
(May 11, 1999) and as corrected, (June 13, 2006); Edgell v. Canning, 1999 UT 21, 976 P.2d 1193 (Utah
1999).

3 Blalock v. Conzelman, 751 So. 2d 2 (Ala. 1999); Apodaca v. Hernandez, 61 N.M. 449, 302 P.2d 177 (1956).

4 Washington v. Washington, 2013 Ark. App. 54, 2013 WL 355972 (2013).

3 Am. Jur. 2d Adverse Possession § 49

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§ 49. Possession after divestment of title

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 60(2), 67

The continued possession of land after a judgment divesting the one in possession of title and vesting it in another is permissive, and not adverse for purposes of adverse possession, until notice of a hostile claim is brought home to the prevailing party.¹

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Footnotes

1 [Shepherd v. Lyle](#), 1964 OK 204, 395 P.2d 641 (Okla. 1964); [Green v. Vance](#), 158 Tex. 550, 314 S.W.2d 794 (1958).

Because a remote grantor of the plaintiff obtained a judgment in trespass to try title against the same defendants covering the same property, the defendants' continued possession after entry of the prior judgment was permissive and not adverse to the title of the record owner unless it could be shown that the record owner had knowledge or record notice that the permissive relationship had been repudiated. [Sims v. Cage](#), 523 S.W.2d 486 (Tex. Civ. App. Houston 1st Dist. 1975), writ refused n.r.e.

3 Am. Jur. 2d Adverse Possession § 50

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4. Possession Under Mistake or Ignorance as to Boundary

§ 50. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 65(5) to 65(3)

A.L.R. Library

[Adverse possession involving ignorance or mistake as to boundaries—modern views](#), 80 A.L.R.2d 1171

Forms

Forms relating to boundary line, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [[Westlaw® Search Query](#)]

Hostile possession, as an element of adverse possession, may exist if possession was taken by mistake¹ or occurred inadvertently.² Hostile possession will be satisfied even if the claimant mistakenly believes that he or she owns the property and occupies it.³ The mistaken belief must be a pure mistake, however, and not one based upon conscious doubt about the

true boundary.⁴ Possession thus is considered hostile when the claimant claims ownership of the land of another although the claimant is under a mistaken belief that the land lies within the description contained in his or her own deed.⁵

Possession is not the less hostile because the claimant takes possession of the land innocently and through mistake or ignorance as to ownership or as to boundary lines since it is possession with the intention to possess the land occupied under a belief that it is the possessor's own that constitutes its hostile character.⁶ Mistake thus cannot be pleaded in avoidance of the legal effect of the possession.⁷

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Footnotes

- 1 *Bussey v. Bussey*, 403 So. 2d 907 (Ala. 1981); *Hubbard v. Curtiss*, 684 P.2d 842 (Alaska 1984); *Gilardi v. Hallam*, 30 Cal. 3d 317, 178 Cal. Rptr. 624, 636 P.2d 588 (1981); *Yatzak v. Cloon*, 313 Mich. 584, 22 N.W.2d 112 (1946); *Kelly v. Bastianic*, 93 A.D.3d 691, 940 N.Y.S.2d 152 (2d Dep't 2012); *Agrons v. Strong*, 250 Or. App. 641, 282 P.3d 925 (2012); *City of Deadwood v. Summit, Inc.*, 2000 SD 29, 607 N.W.2d 22 (S.D. 2000); *Liberto v. Steele*, 188 Tenn. 529, 221 S.W.2d 701 (1949); *Great Southern Life Ins. Co. v. Dodson*, 155 S.W.2d 379 (Tex. Civ. App. Amarillo 1941).
- 2 *Kelly v. Bastianic*, 93 A.D.3d 691, 940 N.Y.S.2d 152 (2d Dep't 2012).
- 3 *Henninger v. Brewster*, 357 S.W.3d 920 (Ky. Ct. App. 2012); *Watson v. Mense*, 298 S.W.3d 521 (Mo. 2009); *Jones v. Miles*, 189 N.C. App. 289, 658 S.E.2d 23 (2008); *Fitts v. Case*, 243 Or. App. 543, 267 P.3d 160 (2011); *McDaniel v. Kendrick*, 386 S.C. 437, 688 S.E.2d 852 (Ct. App. 2009).
- 4 *Tieu v. Morgan*, 246 Or. App. 364, 265 P.3d 98 (2011).
- 5 *Webb v. Drewrey*, 4 So. 3d 1078 (Miss. Ct. App. 2009); *Norgard v. Busher*, 220 Or. 297, 349 P.2d 490, 80 A.L.R.2d 1161 (1960).
- 6 *Rudolph v. Peters*, 35 App. D.C. 438, Am. Ann. Cas. 1912A, 446, 1910 WL 20823 (App. D.C. 1910); *Fesperman v. Grier*, 294 Ala. 163, 313 So. 2d 525 (1975); *Smart v. Murphy*, 200 Ark. 406, 139 S.W.2d 33 (1940); *Sorensen v. Costa*, 32 Cal. 2d 453, 196 P.2d 900 (1948); *Krause v. Nolte*, 217 Ill. 298, 75 N.E. 362 (1905); *Boutin v. Perreault*, 343 Mass. 329, 178 N.E.2d 482 (1961); *Fredericksen v. Henke*, 167 Minn. 356, 209 N.W. 257, 46 A.L.R. 785 (1926); *Wanha v. Long*, 255 Neb. 849, 587 N.W.2d 531 (1998); *Mannillo v. Gorski*, 54 N.J. 378, 255 A.2d 258 (1969); *Belotti v. Bickhardt*, 228 N.Y. 296, 127 N.E. 239 (1920); *Norgard v. Busher*, 220 Or. 297, 349 P.2d 490, 80 A.L.R.2d 1161 (1960).
- 7 *Kendall v. Selvaggio*, 413 Mass. 619, 602 N.E.2d 206 (1992); *Rude v. Marshall*, 54 Mont. 27, 166 P. 298 (1917); *Johnson v. Whelan*, 1940 OK 68, 186 Okla. 511, 98 P.2d 1103 (1940).

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3 Am. Jur. 2d Adverse Possession § 51

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4. Possession Under Mistake or Ignorance as to Boundary

§ 51. Possession beyond actual boundary; intent

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 65(2), 66(2)

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Forms

Forms relating to boundary line, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [[Westlaw® Search Query](#)]

If a landowner, in ignorance of actual boundaries, takes and holds possession by mistake up to a certain line beyond the boundary limits, on the claim and in the belief that it is the true line, with the intention to claim title, and if necessary to acquire title by possession up to that line, that possession is hostile, for acquisition of title by adverse possession.¹ Even if the claimant, on occupancy under a mistake as to the true boundary, did not intend to take land from the true owner and did not intend to occupy

and possess land to which the claimant had no record title, the possession may be hostile if the claimant intended to occupy and did occupy the land as the owner.²

On the other hand, it has been held that, if a party, through ignorance, inadvertence, or mistake, occupies up to a given line beyond that party's actual boundary, believing it to be the true line, but not having an intention to claim title to that extent if it should be ascertained that the line is on a neighbor's land, the possession is not hostile for purposes of adverse possession.³ In other words, if the possession is up to a fixed boundary under a mistake as to the true line and the intention is to hold only to the true line, the possession is not hostile and will not ripen into title.⁴ Thus, where land is occupied through mistake as to the property line with the intention to claim only to the true line, wherever it may be, a claim for adverse possession of the mistakenly occupied land will be denied.⁵

Observation:

In some jurisdictions, an adverse possession claim does not include an intent requirement, and therefore, a claimant's intention to hold only to the true boundary wherever that boundary might be does not defeat a claim of one seeking title by adverse possession to land beyond the true boundary.⁶

CUMULATIVE SUPPLEMENT

Cases:

A long-existing fence may serve as a well-defined boundary even if the property owner is mistaken as to the location of the true line and does not intend to claim property beyond the true boundary. [Elsea v. Day, 448 S.W.3d 259 \(Ky. Ct. App. 2014\)](#), review denied, (Dec. 10, 2014).

[END OF SUPPLEMENT]

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Footnotes

1 [Kimble v. Southern Ready Mix, Inc., 480 So. 2d 1199 \(Ala. 1985\)](#); [Burton v. Griffith, 226 Ark. 641, 291 S.W.2d 516 \(1956\)](#); [Sorensen v. Costa, 32 Cal. 2d 453, 196 P.2d 900 \(1948\)](#); [Sieck v. Anderson, 231 Iowa 490, 1 N.W.2d 647 \(1942\)](#); [Kinder v. Ramey, 267 Ky. 312, 102 S.W.2d 32 \(1937\)](#); [Thibault v. Flynn, 133 Mont. 461, 325 P.2d 914 \(1958\)](#); [Thornburg v. Haecker, 243 Neb. 693, 502 N.W.2d 434 \(1993\)](#); [Wilson v. Moore, 1959 OK 6, 335 P.2d 1085 \(Okla. 1959\)](#); [Norgard v. Busher, 220 Or. 297, 349 P.2d 490, 80 A.L.R.2d 1161 \(1960\)](#); [Elder v. Smith, 196 W. Va. 660, 474 S.E.2d 590 \(1996\)](#).

2 [Walters v. Tucker, 308 S.W.2d 673 \(Mo. 1957\)](#).
The intent required to support an adverse possession claim, even though mistaken, is sufficient if the claimant occupies to the wrong line believing it to be true even if he or she does not intend to claim more than that described in his or her deed. [Wanha v. Long, 255 Neb. 849, 587 N.W.2d 531 \(1998\)](#).

3 Rudolph v. Peters, 35 App. D.C. 438, Am. Ann. Cas. 1912A, 446, 1910 WL 20823 (App. D.C. 1910); Burton v. Griffith, 226 Ark. 641, 291 S.W.2d 516 (1956); City of Bonner Springs v. Clark, 3 Kan. App. 2d 8, 588 P.2d 477 (1978); Wilson v. Shepherd, 244 Ky. 225, 50 S.W.2d 540 (1932); Cates v. Smith, 636 A.2d 986 (Me. 1994); Rude v. Marshall, 54 Mont. 27, 166 P. 298 (1917); Norgard v. Busher, 220 Or. 297, 349 P.2d 490, 80 A.L.R.2d 1161 (1960); Schaubuch v. Dillemuth, 108 Va. 86, 60 S.E. 745 (1908); McCormick v. Sorenson, 58 Wash. 107, 107 P. 1055 (1910); Bettack v. Conachen, 235 Wis. 559, 294 N.W. 57 (1940).

4 Tanner v. Dobbins, 255 Ala. 671, 53 So. 2d 549 (1951); Rye v. Baumann, 231 Ark. 278, 329 S.W.2d 161 (1959); Craig v. Paulk, 162 Kan. 280, 176 P.2d 529 (1947); Warner v. Noble, 286 Mich. 654, 282 N.W. 855 (1938); Ward v. Rodriguez, 43 N.M. 191, 88 P.2d 277 (1939).

Where a mistake occurs in determining the location of a boundary line described in a deed and the claimant has not proved the definite and positive intention to occupy, use, and claim as his or her own the land up to a particular and definite line on the ground, then the claimant cannot establish adverse possession. *Quatannens v. Tyrrell*, 268 Va. 360, 601 S.E.2d 616 (2004).

5 Brewer v. Murphy, 161 Cal. App. 4th 928, 74 Cal. Rptr. 3d 436 (5th Dist. 2008).

6 Dombkowski v. Ferland, 2006 ME 24, 893 A.2d 599 (Me. 2006).

3 Am. Jur. 2d Adverse Possession § 52

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Adverse Possession

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II. Elements and Requisites

D. Hostile Character of Possession

4. Possession Under Mistake or Ignorance as to Boundary

§ 52. Visible boundary line

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 65(2), 66(2)

A.L.R. Library

[Adverse possession involving ignorance or mistake as to boundaries—modern views](#), 80 A.L.R.2d 1171

If an intention is manifested to claim title to a visible, fixed, and ascertained boundary line in all events, the possession is hostile for purposes of adverse possession, even if it is erroneously assumed to be the true line and the possession is held and the claim made because of the mistake as to the location of the boundary.¹ In other words, if the claim is to a visible boundary in all events, whether it is the true line or not, the possession is hostile.² Thus, if an occupant claims land up to an established and visible line, such as a fence, and although the line as marked by the fence is erroneous in fact as a boundary line, the possession up to the fence is hostile if the occupant believes it to be the true boundary line and intends to hold and claim the land to it.³ If the possession of real property, even though maintained up to certain fixed and visible lines, is without any intention to claim title to the land, however, it will not be considered hostile for the purposes of an adverse possession claim.⁴

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Footnotes

1 Davis v. Miller, 352 So. 2d 1357 (Ala. 1977); Higginbotham v. Kuehn, 102 Ariz. 37, 424 P.2d 165 (1967);
Moss v. O'Brien, 165 Colo. 93, 437 P.2d 348 (1968); Sieck v. Anderson, 231 Iowa 490, 1 N.W.2d 647 (1942);
Gregory v. Thorrez, 277 Mich. 197, 269 N.W. 142 (1936); Dawson v. Abbott, 184 N.C. 192, 114 S.E. 15
(1922); Anthony v. Searle, 681 A.2d 892 (R.I. 1996); Christian v. Bulbeck, 120 Va. 74, 90 S.E. 661 (1916).
2 Gary v. Dane, 411 F.2d 711 (D.C. Cir. 1969); Davis v. Miller, 352 So. 2d 1357 (Ala. 1977); Rye v. Baumann,
231 Ark. 278, 329 S.W.2d 161 (1959); Surfside Hotel v. W. E. Moorehead Co., 149 Fla. 397, 5 So. 2d 857
(1942); Krause v. Nolte, 217 Ill. 298, 75 N.E. 362 (1905); Wagner v. Thompson, 163 Kan. 662, 186 P.2d 278
(1947); Mudwilder v. Claxton, 301 S.W.2d 3 (Ky. 1957); Consolidated Mechanical Contractors, Inc. v. Ball,
263 Md. 328, 283 A.2d 154 (1971); Walker v. Bowen, 333 Mich. 13, 52 N.W.2d 574 (1952); Crane v. Loy,
436 S.W.2d 739 (Mo. 1968); Carnahan v. Cummings, 105 Neb. 337, 180 N.W. 558, 12 A.L.R. 1455 (1920);
Major v. Meyers, 111 S.W.2d 1184 (Tex. Civ. App. El Paso 1937); McCormick v. Sorenson, 58 Wash. 107,
107 P. 1055 (1910); Schiro v. Oriental Realty Co., 272 Wis. 537, 76 N.W.2d 355, 73 A.L.R.2d 1368 (1956).
3 Hagood v. Hensley, 371 So. 2d 421 (Ala. 1979); Peoples v. Hagaman, 31 Tenn. App. 398, 215 S.W.2d 827
(1948).

Evidence that all individuals associated with a neighboring land owner believed that the fence line was the boundary between the landowner and neighbor, when they planted and cultivated Christmas trees, and logged in the disputed strip of land, was sufficient to establish the hostility requirement of adverse possession based on mistaken belief of ownership. *Pellham v. Skeans*, 232 Or. App. 294, 222 P.3d 43 (2009).

4 Spradling v. May, 259 Ala. 10, 65 So. 2d 494 (1953); *Swim v. Langland*, 234 Iowa 46, 11 N.W.2d 713 (1943).

3 Am. Jur. 2d Adverse Possession § 53

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§ 53. Agreement as to boundary line

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 65(2), 66(2)

Forms

Forms relating to boundary line, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [[Westlaw® Search Query](#)]

If adjoining landowners agree on a boundary line and each occupies up to its location, the possession is presumed to be hostile, for purposes of adverse possession, on the part of the occupant who lacks title, and the boundary is fixed after the prescribed statutory period.¹ Thus, when a border, even though erroneous, is observed by all parties as the boundary of the property for the required statutory period, it becomes the true boundary through adverse possession.²

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Footnotes

1

[Salter v. Cobb](#), 264 Ala. 609, 88 So. 2d 845 (1956).

As to the establishment of boundaries by agreements or acts of the parties, see [Am. Jur. 2d, Boundaries](#) §§ 69 to 84.

3 Am. Jur. 2d Adverse Possession § 54

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D. Hostile Character of Possession

4. Possession Under Mistake or Ignorance as to Boundary

§ 54. Presence of boundary fence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 66(1), 66(2)

A.L.R. Library

[Fence as factor in fixing location of boundary line—modern cases, 7 A.L.R.4th 53](#)

If a fence is constructed as a boundary line fence between two properties, and if the parties concerned claim ownership of the land to the fence during the prescribed statutory period without interruption in their possession or control during that time, they will acquire title by adverse possession to any land that was improperly enclosed with or added to the land they owned at the time the fence was constructed.¹ Long recognition and acquiescence by adjoining landowners in a boundary fence raises a presumption that the land was held hostilely or adversely up to the fence.² The placement of a fence within one's boundary line, however, does not lead to the relinquishment of the lands outside the fence, without an additional showing that those lands outside the fence have been used by the neighboring landowner under a claim of ownership for the requisite period of time.³

Observation:

Where a fence is used as a boundary between properties, it is immaterial who constructed it.⁴

CUMULATIVE SUPPLEMENT

Cases:

Property owners acquired land between fence and southern boundary of Indian tribe's land by adverse possession before tribe purchased the land which was adjacent to owners' property, where disputed property had been in owners' family for decades, permanent, visible fence marked the boundary between the two properties for decades, both owners and prior owners of adjacent land treated fence as the property line, and owners had gone onto disputed property, cut trees, trimmed branches, and mended the fence for 70 years. [Wash. Rev. Code Ann. § 4.16.020. Lundgren v. Upper Skagit Indian Tribe, 389 P.3d 569 \(Wash. 2017\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 Salter v. Cobb, 264 Ala. 609, 88 So. 2d 845 (1956); Konop v. Knobel, 167 Neb. 318, 92 N.W.2d 714 (1958).
- 2 Hobson v. Miller, 64 N.M. 215, 326 P.2d 1095 (1958); Hovendick v. Ruby, 10 P.3d 1119 (Wyo. 2000).
- 3 Gustin v. Scheele, 250 Neb. 269, 549 N.W.2d 135 (1996).
- 4 Marvel v. Barley Mill Road Homes, 34 Del. Ch. 417, 104 A.2d 908 (1954).

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3 Am. Jur. 2d Adverse Possession § 55

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II. Elements and Requisites

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4. Possession Under Mistake or Ignorance as to Boundary

§ 55. Encroachment of building or other structure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 65(2), 66(2)

A.L.R. Library

[Adverse possession based on encroachment of building or other structure, 2 A.L.R.3d 1005](#)

One who remains in possession of a building or other structure of a permanent nature that encroaches beyond the boundary line, during the prescribed statutory period in which actions to recover possession of real property may be maintained, acquires title by adverse possession to that portion of the adjoining property covered by the structure, even if it was erected in ignorance of the location of the true boundary line, and supposedly on land rightfully owned by the builder.¹ To acquire title by adverse possession by this means to a strip of adjoining property, the building or other structure must be of a substantial and permanent nature, sufficient to call the attention of the owner of record to the encroachment.² Although one may acquire title to that portion of an adjoining lot on which a building is erected and maintained for the statutory period, title is not obtained to that portion of a lot that would have been covered had the building been extended the full length of the lot.³

The claimant must occupy with the intent to claim title to all land covered by the encroachment to acquire title by adverse possession.⁴ If the improvements are located beyond what is supposed to be the true line, and the party making them intends

to claim only to the true line, to be thereafter ascertained, whenever and wherever it might be located, the possession is not hostile or adverse.⁵

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Footnotes

1 Carter v. Roberson, 214 Ark. 750, 217 S.W.2d 846 (1949); La Chance v. Rubashe, 301 Mass. 488, 17 N.E.2d 685 (1938); Romans v. Nadler, 217 Minn. 174, 14 N.W.2d 482 (1944); McDaniels v. Cutburth, 270 S.W. 353 (Mo. 1925); Belotti v. Bickhardt, 228 N.Y. 296, 127 N.E. 239 (1920); State Bank & Trust of Kenmare v. Brekke, 1999 ND 212, 602 N.W.2d 681 (N.D. 1999); Moore v. Chapman, 1959 OK 185, 344 P.2d 1100 (Okla. 1959); McCormick v. Sorenson, 58 Wash. 107, 107 P. 1055 (1910); City of Rock Springs v. Sturm, 39 Wyo. 494, 273 P. 908, 97 A.L.R. 1 (1929).

2 Edie v. Coleman, 235 Mo. App. 1289, 141 S.W.2d 238 (1940); Morgan v. Jenson, 47 N.D. 137, 181 N.W. 89 (1921).

3 Gloyd v. Franck, 248 Mo. 468, 154 S.W. 744 (1912); Scarella v. Ascolese, 135 N.J. Eq. 283, 38 A.2d 194 (Ch. 1944).

4 Janke v. McMahon, 21 Cal. App. 781, 133 P. 21 (3d Dist. 1913); Boese v. Crane, 182 Kan. 777, 324 P.2d 188 (1958); Village of Red Jacket v. Pinton, 126 Mich. 194, 85 N.W. 567 (1901); Koch v. Gordon, 231 Mo. 645, 133 S.W. 609 (1910); Fuller v. Jackson, 62 S.W. 274 (Tenn. Ch. App. 1901).

5 Diers v. Peterson, 290 Mo. 249, 234 S.W. 792 (1921).

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3 Am. Jur. 2d Adverse Possession § 56

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§ 56. Projection or inclination of wall

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#) 66(1), 66(2)

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[Adverse possession based on encroachment of building or other structure](#), 2 A.L.R.3d 1005

Some authorities hold that title to land by adverse possession may be based on the fact that the wall of a building belonging to the one claiming by adverse possession leans over the land claimed by adverse possession.¹ Other authorities, however, hold that the mere tipping of a wall of a building so as to project into the airspace above the adjoining lot does not interrupt the continuity of possession of the owner of the lot so as to bring it within the provisions of the statute of limitations applicable to cases of persons not in possession.²

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Footnotes

¹ [Five Twelve Locust v. Mednikow](#), 270 S.W.2d 770 (Mo. 1954); [De Rosa v. Spaziani](#), 142 N.Y.S.2d 839 (Sup 1955).

² [Kafka v. Bozio](#), 191 Cal. 746, 218 P. 753, 29 A.L.R. 833 (1923).

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